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VETERANS BENEFITS AND HEALTH CARE AMENDMENTS OF 1990

REPORT

OF THE

COMMITTEE ON VETERANS' AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 2100

together with

MINORITY VIEWS

and

APPENDIX

July 19 (legislative day, July 10), 1990.—Ordered to be printed

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101st Congress
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SENATE

Report
101-379

VETERANS BENEFITS AND HEALTH CARE AMENDMENTS OF 1990

July 19 (legislative day, July 10), 1990.—Ordered to be printed

Mr. Cranston, from the Committee on Veterans' Affairs, submitted the following

REPORT

together with

MINORITY VIEWS

and

APPENDIX

[To accompany S. 2100]

The Committee on Veterans' Affairs, to which was referred the bill (S. 2100) to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to amend title 38, United States Code, to improve veterans' compensation, health-care, insurance, and housing programs, and to provide for transitional group residences for veterans recovering from substance-abuse disabilities; and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a committee substitute and an amendment to the title, and recommends that the bill, as amended, do pass.

Committee Amendments

The amendments are as follows:

Strike out all after the enacting clause as follows:

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Veterans Compensation Cost-of-Living Adjustment Act of 1990".

[SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

[Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

[TITLE I—COMPENSATION

[SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASE.

[(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1990, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

[(2)(A) The Secretary shall increase each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by the amendments made by title XI of the Veteran's Benefits Improvement Act of 1988 (Public Law 100-687; 102 Stat. 4123). The increase shall be made in such rates and limitations as in effect on November 30, 1990, and shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1990, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

[(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

[(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

[(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1990, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsection (a)(2)(A) as increased under this section.

[SEC. 102. EXTENSION OF PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN RADIATION-EXPOSED RESERVISTS.

[(a) IN GENERAL.—Section 312(c) is amended—

[(1) in paragraph (3), by inserting "while serving on active duty" after "activity";

[(2) in paragraph (4)—

[(A) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C);

[(B) by inserting before subparagraph (B) (as redesignated by subparagraph (A)) the following new subparagraph:

["(A) the term 'active duty' includes active duty for training and inactive duty for training."; and

[(C) in subparagraph (B) (as redesignated by subparagraph (A)), by striking out "a veteran" and inserting in lieu thereof "an individual".

[(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as of May 1, 1988.

[SEC. 103. AUTHORITY TO MAKE READJUSTMENTS IN THE DISABILITY RATING SCHEDULE PROSPECTIVE ONLY.

[Section 355 is amended—

[(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

[(2) by designating the first three sentences as subsection (a);

[(3) by designating the last sentence as subsection (b); and

[(4) by adding at the end the following new subsection:

[“(c) In making a readjustment under subsection (b) of this section, the Secretary may provide that the readjustment shall not have the effect of reducing any ratings in effect on the date that the readjustment takes effect.”.

[TITLE II—HEALTH CARE

[SEC. 210. EXTENSION OF PILOT PROGRAM OF MOBILE HEALTH CARE CLINICS.

[Section 113(b) of the Veterans’ Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 500) is amended—

[(1) by striking out “and 1990” and inserting in lieu thereof a comma and “1990, and 1991”; and

[(2) by adding at the end the following new sentence: “Funds appropriated to carry out the pilot program authorized by this section shall remain available until expended.”.

[SEC. 202. ELIGIBILITY FOR PROSTHETIC DEVICES AND OTHER MEDICAL ITEMS.

[Section 601(6)(A)(i) is amended by striking out “(Except under the conditions described in section 612(f)(1)(A)(i) of this title)”.

[SEC. 203. INCREASE IN MAXIMUM LIMITATIONS ON HOME HEALTH SERVICES.

[Section 617(a)(2) is amended—

[(1) in subparagraph (A), by striking out “$2,500” and inserting in lieu thereof “$5,000”; and

[(2) in subparagraph (B), by striking out “$600” and inserting in lieu thereof “$1,200”.

[TITLE III—INSURANCE

[SEC. 301. SUPPLEMENTAL SERVICE DISABLED VETERANS’ INSURANCE FOR TOTALLY DISABLED VETERANS.

[(a) In General.—Subchapter I of chapter 19 is amended by inserting after section 722 the following new section:

[“§ 722A. Supplemental service disabled veterans’ insurance for totally disabled veterans

[“(a) Any person insured under section 722 of this title who qualifies for a waiver of premiums under section 712 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed $10,000.

[“(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance not later than the end of (1) the one-year period beginning on the first day of the first month following the month in which this section is enacted, or (2) the period during which the person must apply under section 722(a) of this title in order to be granted insurance under that section.

[“(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 722 of this title, except that such insurance may not be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

[“(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.”.

[(b) Clerical Amendment.—The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 722 the following new item:

[“722A. Supplemental service disabled veterans’ insurance for totally disabled veterans.”.

[SEC. 302. INCREASE IN AMOUNT OF VETERANS’ MORTGAGE LIFE INSURANCE.

[Section 806(b) is amended in the first sentence—

[(1) by striking out “initial”; and

[(2) by striking out “$40,000” and inserting in lieu thereof “$90,000”.

[TITLE IV—MISCELLANEOUS

[SEC. 401. POSTPONEMENT OF TIME LIMITATION ON COUNTING OF VIETNAM-ERA VETERANS IN DISABLED VETERANS OUTREACH PROGRAM SPECIALISTS FUNDING FORMULA.

[Section 2001(2) is amended by inserting before the period at the end ", except that a veteran may be considered to be a veteran of the Vietnam era for the purposes of this chapter until December 31, 1993".

[SEC. 402. COMMUNITY-BASED HOUSING FOR CERTAIN VETERANS WHO ARE HOMELESS OR RECOVERING FROM SUBSTANCE ABUSE OR MENTAL ILLNESS DISABILITIES.

[(a) Extension and Expansion of Authority To Sell Acquired Properties for Occupancy by Homeless and Certain Other Veterans.—Section 9 of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Public Law 100-198; 38 U.S.C. 1820 note) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by inserting "and to provide transitional housing for veterans recovering from substance abuse or mental illness disabilities" after "shelter";

[(B) in paragraphs (2) and (3)(B)(iii), by striking out "best interests of homeless veterans" each place it appears and inserting in lieu thereof "best interests of veterans who are to occupy the property"; and

[(C) in paragraph (3)(B)(i), by inserting "or as transitional housing for veterans who, at the time of entering the housing, are being furnished services by the Secretary, directly or by contract, for alcohol or drug dependence or abuse disabilities or mental illness disabilities or who, at any time within 90 days preceding the date of entering the housing, have been furnished such services by the Secretary for such purpose" after "families";

[(2) in subsection (c) by striking out "October 1, 1990" and inserting in lieu thereof "December 31, 1993"; and

[(3) in subsection (d)—

[(A) by inserting "and March 1 of each of the next three years" after "March 1, 1990," and

[(B) by striking out ", through December 31, 1989," and inserting thereof "through December 31 of the preceding year" after "section".

[(b) Transitional Group Residences for Veterans Recovering From Substance Abuse Disabilities.—(1) Section 620A is amended by adding at the end the following new subsections:

["(h)(1) To assist veterans in recovering from alcohol or drug dependence or abuse disabilities, there is hereby established in the Treasury of the United States a revolving fund to be known as the 'Transitional Housing Fund'. The Secretary shall use the proceeds of the Fund to make loans authorized under subsection (j) of this section to nonprofit entities for the purpose of assisting such entities in meeting the costs of establishing programs for the provision of transitional residences for recovering veterans.

["(2) For the purposes of this paragraph, the term 'recovering veterans' means veterans who, at the time of entering the residences, are being furnished services by the Secretary, directly or by contract, for alcohol or drug dependence of abuse disabilities or who, at any time within 90 days preceding the date of entering the residences, have been furnished such services by the Secretary for such purpose.

["(i) On October 1, 1990, the Secretary of the Treasury shall transfer $100,000 from the revolving fund established pursuant to section 4204 of this title to the Transitional Housing Fund. After that date, the Secretary of the Treasury shall transfer from the revolving fund established pursuant to that section to the Transitional-Housing Fund such amounts, not to exceed a total of $900,000, as the Secretary of Veterans Affairs may specify.

["(j) The Secretary shall make loans from the Transitional Housing Fund for the purpose described in subsection (h)(1) of this section. In making loans under this subsection, the Secretary shall ensure that—

["(1) each loan is repaid within two years after the date on which the loan is made;

["(2) each loan is repaid through monthly installments and that a reasonable penalty is assessed for each failure to pay an installment by the date specified in the loan agreement involved; and

["(3) each loan is made only to a nonprofit private entity which agrees that, in the operation of each residence established with the assistance of the loan—

["(A) the use of Alcohol or any illegal drug in the residence will be prohibited;

["(B) any resident who violates the prohibition in subclause (A) of this clause will be expelied from the residence;

["(C) the costs of maintaining the residence, including fees for rent and utilities, will be paid by the residents;

["(D) the residents will, through a majority vote of the residents, otherwise establish policies governing the conditions of residence, including the manner in which applications for residence are approved; and

["(E) the residence will be operated soley as a residence for not less than six veterans.

["(k) No loan may be made under this section for more than $4,000 and not more than $4,000 in total loans may be made for the establishment of any particular transitional residence.

["(l) All loan repayments and penalties collected under this section shall be deposited to the credit of the Transitional Housing Fund.

["(m) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall issue guidelines for the operation of residences described in subsection (h)(1) of this section.

["(n) The Secretary may enter into contractural agreements with private nonprofit corporations for the purposes of collecting on behalf of the Secretary payments on the loans described in subsection (h)(1) of this section.".

[(2) The amendment made by paragraph (1) shall take effect on October 1, 1990.

[SEC. 403. PERMANENT EXTENSION OF FINANCIAL INFORMATION AND COUNSELING ASSISTANCE FOR CERTAIN VETERANS WITH GUARANTEED LOANS.

[Subparagraph (C) of section 1832(a)(4) is repealed.

[SEC. 404. TECHNICAL CORRECTIONS.

[(a) ADJUDICATIONS.—(1) The heading of section 3004 is amended to read as follows:

["§ 3004. Notice of decisions".

[(2) The table of sections at the beginnng of chapter 51 is amended by striking out the item relating to section 3004 and inserting in lieu thereof the following:

["3004. Notice of decisions.".

[(b) EDUCATION PROGRAMS.—(1) Section 1418(b)(4) is amended—

[(A) by striking out the comma after "service" and inserting in lieu thereof "(i)"; and

[(B) by inserting ", or (ii) has successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree" before the semicolon.

[(2) Section 1433(b) is amended by striking out "section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note)," and inserting in lieu thereof "chapter 109 of title 10".

[(3) Section 1685(a)(5) is amended by inserting "or National Guard" after "Department of Defense".

[(c) HOME LOAN PROGRAM.—(1) Section 1803(a)(1)(A)(i) is amended—

[(A) in subclause (III)—

[(i) by inserting "except as provided in subclause (IV) of this clause," after "(III)"; and

[(ii) by striking out "but not more than $144,000,"; and

[(B) in subclause (IV), by striking out "or (6)" and inserting in lieu thereof "(6), or (8)";

[(2) Section 1825(c) is amended—

[(A) in subparagraph (2), by striking out "There" and inserting in lieu thereof "Except as provided in paragraph (3) of this subsection, there"; and

[(B) by adding at the end the following new paragraph:

["(3) In the case of a loan described in clause (C) of section 1829(a)(2) of this title, there also shall be credited to the Guaranty and Indemnity Fund—

["(A) for each loan closed during fical year 1990, an amount equal to 0.25 percent of the original amount of the loan for each of the fiscal years 1991 and 1992;

["(B) for each loan closed during fical year 1990, an amount equal to 0.25 percent of the original amount of the loan for each of the fiscal year in which the loan is closed and for the following fiscal year.".

[(3) Section 1829(a) is amended by striking out paragraphs (3) and (4) and redesignating paragraph (5) as paragraph (3).

[(4) Section 1829(c)(2) is amended by striking out "section 1825(c)(2) (A) or (B) of this title and subsection (a)(3) of this section" and inserting in lieu thereof "clause (A) or (B) of paragraph (2) of section 1825(c) of this title or paragraph (3) of that section".

[(5) Any actions of the Secretary of Veterans Affairs in carrying out the provisions of section 1829 of title 38, United States Code, by contract or otherwise, with respect to loans closed during the period beginning on December 1, 1989, and ending on the date of the enactment of the Veterans' Benefits Amendments of 1989 (Public Law 101-237) are hereby ratified.

[(d) MISCELLANEOUS AMENDMENTS.—(1) Chapter 36 is amended in sections 1732(c)(3), 1732(e), and 1733(a)(1), by striking out "Secretary of Veterans Affairs" and inserting in lieu thereof "Secretaryl".

[(2) The chapter heading of chapter 71 is amended to read as follows:

["CHAPTER 71—BOARD OF VETERANS APPEALS."

[(3) The table of sections at the beginning of chapter 71 is amended by striking out the item relating to section 4001 and inserting in lieu thereof the following:

["4001. Composition of Board of Veterans Appeals.".

[(4) The heading of section 4001 is amended to read as follows:

["§ 4001. Composition of Board of Veterans Appeals".

[(5) The text of chapters 71 and 72 is amended—

[(A) by striking out "Board of Veterans' Appeals" each place is appears and inserting in lieu thereof "Board of Veterans Appeals";

[(B) by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department"; and

[(C) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary".]

and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Benefits and Health Care Amendments of 1990".

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION

PART A—GENERALLY

SEC. 101. DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASES.

(a) IN GENERAL.—(1) The Secretary of Veterans Affairs shall, as provided in paragraph (2), increase, effective December 1, 1990, the rates of and limitations on Department of Veterans Affairs disability compensation and dependency and indemnity compensation.

(2)(A) The Secretary shall increase each of the rates and limitations in sections 314, 315(1), 362, 411, 413, and 414 of title 38, United States Code, that were increased by the amendments made by title XI of the Veteran's Benefits Improvement Act of 1988 (Public Law 100-687; 102 Stat. 4123). The increase shall be made in such rates and limitations as in effect on November 30, 1990, and shall be by the same percentage that benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1990, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(B) In the computation of increased rates and limitations pursuant to subparagraph (A), amounts of $0.50 or more shall be rounded to the next higher dollar amount and amounts of less than $0.50 shall be rounded to the next lower dollar amount.

(b) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

(c) PUBLICATION REQUIREMENT.—At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 1990, the Secretary shall publish in the Federal Register the rates and limitations referred to in subsection (a)(2)(A) as increased under this section.

SEC. 102. AUTHORITY TO MAKE READJUSTMENTS IN THE DISABILITY RATING SCHEDULE PROSPECTIVE ONLY.

IN GENERAL.—Section 355 is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

(2) by designating the first three sentences as subsection (a);

(3) by designating the last sentence as subsection (b); and

(4) by adding at the end the following new subsection:

"(c) In making a readjustment under subsection (b) of this section, the Secretary may provide that the readjustment shall not have the effect of reducing any ratings in effect on the date that the readjustment takes effect.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1990.

PART B—RADIOGENIC DISABILITIES

SEC. 111. EXTENSION OF PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN RADIATION-EXPOSED RESERVISTS.

(a) IN GENERAL.—Section 312(c) is amended in paragraph (3)—

(1) by redesignating subparagraphs (A) and (B) as subparagraphs (B) and (C);

(2) by inserting before subparagraph (B) (as redesignated by subparagraph (A)) the following new subparagraph:

"(A) the term 'active duty' includes active duty training and inactive duty training."; and

(C) in subparagraph (B) (as redesignated by subparagraph (A)), by striking out "a veteran" and inserting in lieu thereof "an individual".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as of May 1, 1988.

SEC. 112. EXPANSION OF LIST OF DISEASES PRESUMED TO BE SERVICE-CONNECTED FOR CERTAIN RADIATION-EXPOSED VETERANS AND ELIMINATION OF LATENCY-PERIOD LIMITATIONS.

IN GENERAL.—Section 312(c) is amended—

(1) in paragraph (1), by striking out "to a degree" and all that follows through "subsection)";

(2) in paragraph (2), by adding at the end the following new clauses:

"(N) Cancer of the salivary gland.

"(O) Cancer of the urinary tract.";

(3) by striking out paragraph (3); and

(4) by redesignating paragraph (4) as paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect October 1, 1990.

SEC. 113. ADJUDICATION OF CLAIMS BASED ON EXPOSURE TO IONIZING RADIATION.

The Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542) is amended—

(1) in section 5(a)(1)—

(A) by striking out "or" at the end of subclause (A),

(B) by striking out "; and" at the end of subclause (B) and inserting in lieu thereof ", or"; and

(C) adding at the end the following new clause—

"(C) in connection with such veteran's participation in an activity listed pursuant to section 10, to ionizing radiation; and";

(2) in section 5(b)(2)(B)—

(A) by striking out "or" after the comma at the end of clause (i);

(B) by striking out the period at the end of clause (ii), and inserting in lieu thereof ", or"; and

(C) by adding at the end the following new clause:

"(iii) a connection to exposure to ionizing radiation, in the case of a veteran who participated, or a category of veterans who participated, in an activity listed pursuant to section 10."; and

(3) in section 5(b)(3)(B)—

(A) by inserting "or from participation in an activity listed pursuant to section 10" after "device"; and

(B) by striking out "during active military, naval, or air service" and inserting in lieu thereof "while serving on active duty, active duty for training, or inactive duty training"; and

(4) by adding at the end the following:

"OTHER ACTIVITIES INVOLVING EXPOSURE TO IONIZING RADIATION

"SEC. 10. (a) IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE.—(1) Not later than 210 days after the date of the enactment of the Veterans Benefit and Health Care Amendments of 1990, the Secretary of Veterans Affairs (hereafter in this section referred to as the 'Secretary'), in consultation with the Secretary of Defense, shall identify not less than three activities (other than the activities described in paragraph (3)(B) of section 312(c) of title 38, United States Code) in which individuals serving on active duty, active duty for training, or inactive duty training have participated and which likely would have exposed such individuals to levels of ionizing radiation above background levels. In identifying the activities, the Secretary shall to the extent feasible consider the number and level of exposure of individuals and shall—

"(A) describe the times and places at which exposure to each listed activity may have occurred;

"(B) specify the maximum level of radiation to which participants or categories of participants in each listed activity may have been exposed;

"(C) provide information sufficient to make possible the identification of the individuals who, while so serving, participated in each of the activities; and

"(D) estimate the maximum number of individuals who participated in each of the activities.

"(2) Not later than October 1 of each of the fiscal years 1991, 1992, and 1993, the Secretary shall identify not less than three additional activities determined in the manner prescribed in paragraph (1).

"(b) EVALUATION BY THE ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS.—Immediately after the Secretary identifies an activity pursuant to subsection (a), the Secretary shall direct the Advisory Committee (established under section 6) to evaluate, and make a finding as to, whether participation by any veteran or category of veterans in the activity resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in a 'radiation-risk activity' as defined in section 312(c) of title 38, United States Code. Evaluations and findings made pursuant to this subsection shall be made on the basis of available scientific evidence.

"(c) REPORT OF EVALUATION.—The Advisory Committee promptly shall make the evaluation required by subsection (b) with respect to each activity identified pursuant to subsection (a) and, not later than 120 days after receiving a direction under subsection (b), submit to the Secretary a report regarding the results of the evaluation. The Advisory Committee shall include in the report its findings and such recommendations as it considers appropriate to assist the Secretary in carrying out subsection (d).

"(d) DETERMINATIONS.—The Secretary shall, within 60 days after receiving a report of an evaluation under subsection (c), list each activity identified pursuant to subsection (a) unless the Secretary determines (based on the report of the Advisory Committee under subsection (c) and all other relevant scientific evidence, information, and analysis available to the Secretary at the time of the determination) that the activity did not result in an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in a 'radiation-risk activity', as defined in section 312(c) of title 38, United States Code.

"(e)(1) REPORTS TO CONGRESSIONAL COMMITTEES.—Within five days after the first activity is identified pursuant to subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report of the activity and provide the information specified in subsection (a)(1) (A) through (D). Thereafter, whenever an activity is so identified, the Secretary shall immediately report that fact to such committees.

"(2) Within 120 days after receiving a report of an evaluation under subsection (c), the Secretary shall submit to such committees a copy of that report and a report of the actions that the Secretary has taken and is planning to take with respect to the matters pertaining to the evaluation.

"(f) DEFINITIONS.—For the purpose of this section, the terms 'active duty', 'active duty for training', and 'inactive duty training' shall have the meanings provided in paragraphs (21), (22), and (23), respectively, of section 101 of title 38, United States Code.".

PART C—AGENT ORANGE EXPOSURE AND VIETNAM SERVICE

SEC. 121. SHORT TITLE.

This part may be cited as the "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1990".

SEC. 122. PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN VETERANS WHO SERVED IN VIETNAM.

Section 312 is amended by adding at the end the following new subsection:

"(d)(1) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, a disease specified in paragraph (2) of this subsection becoming manifest as specified in such paragraph in a veteran who, during active military, naval, or air service, served in Vietnam during the Vietnam era shall be considered to have been incurred in or aggravated by such service in Vietnam notwithstanding that there is no record of evidence of such disease during the period of such service.

"(2) The diseases referred to in paragraph (1) of this subsection are the following:

"(A) Non-Hodgkin's lymphoma becoming manifest to a 10-percent degree of disability or more.

"(B) Each soft-tissue sarcoma becoming manifest to a 10-percent degree of disability or more other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, or mesothelioma.

"(C) Chloracne or another acneform disease consistent with chloracne becoming manifest to a 10-degree of disability or more within one year after the last date on which the veteran performed active military, naval, or air service in Vietnam during the Vietnam era.".

SEC. 123. PRESUMPTION OF SERVICE CONNECTION FOR DISEASES ASSOCIATED WITH EFFECTS OF EXPOSURE TO CERTAIN HERBICIDE AGENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) It is in the public interest to provide for an independent nonprofit scientific organization which has appropriate expertise and is not connected to the Department of Veterans Affairs to review and evaluate the available scientific evidence regarding associations between diseases and exposure to dioxin and other chemical compounds in herbicides and to make judgments on the degree and probability of such associations, because there is no uniform body of scientific literature on such issues.

(2) The standard of proof required for a scientific conclusion of causation is higher than the standard of proof required for justification of a presumption, for purposes of veterans disability compensation laws, that an adverse health effect is connected, based on sound medical and scientific evidence, to active service in the Armed Forces of the United States.

(b) IN GENERAL.—(1) Subchapter II of chapter 11 of title 38, United States Code, is amended by inserting after section 312 the following new section:

"§ 312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents

"(a) IN GENERAL.—(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a Vietnam veteran who, during Vietnam service, was exposed to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicide agent, each disease (if any) listed in regulations prescribed by the Secretary in accordance with this section and identified in such regulations as having positive association with the biological effects of exposure to such herbicide agent shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

"(2) For the purposes of this subsection, a veteran who performed Vietnam service and has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affirmative evidence to establish conclusively that the veteran was not exposed to any such agent during such service.

"(3) The Secretary may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside Vietnam, was exposed to an agent of the same type as the herbicide agent referred to in paragraph (1) of this subsection.

"(b) Diseases To Be Prescribed in Regulations.—(1) Whenever the Secretary determines pursuant to this section that there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam, the Secretary shall prescribe regulations listing each disease having such positive association. In the case of each disease listed in the regulations, the Secretary shall identify the herbicide agent that causes the biological effects with which the disease has positive association. After the Secretary prescribes regulations pursuant to this paragraph, the Secretary shall periodically revise such regulations, as appropriate, to reflect determinations periodically made pursuant to paragraph (2) of this subsection.

"(2) The Secretary shall periodically (not less often than biennially)—

"(A) determine whether any disease not listed in regulations under this section has positive association with such effects; and

"(B) determine whether any disease listed in such regulations does not have positive association with such effects.

"(3) The Secretary shall make determinations for the purpose of this subsection on the basis of reports received by the Secretary from a contract scientific organization pursuant to this section and all other relevant scientific evidence, information, or analyses available to the Secretary at the time of the determinations.

"(c) Utilization of Contract Scientific Organization.—In prescribing and revising regulations for the purposes of subsection (b), the Secretary shall obtain, by contract, the determinations and estimates of a contract scientific organization as provided in this section.

"(d) Required Activities of Contract Scientific Organizations.—(1) Each contract entered into under subsection (c) of this section shall provide for a contract scientific organization—

"(A) to determine, in the case of each herbicide agent—

"(i) which diseases (if any) have positive association with the biological effects of exposure to such agent, including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects;

"(ii) which diseases (if any) have limited positive association with such biological effects;

"(iii) which diseases (if any) have insubstantial association with such biological effects; and

"(iv) to the extent practicable, the biological basis for the positive, limited positive, and insubstantial associations of diseases referred to in subclauses (i), (ii), and (iii) of this clause with such biological effects; and

"(B) to estimate the extent of the association between each such disease and such biological effects using methods as quantitative and as objective as the relevant available data permit.

"(2) The contract scientific organization shall specifically determine whether there is positive, limited positive, or insubstantial association between the biological effects referred to in paragraph (1) of this subsection and the following diseases:

"(A) Lung cancer.

"(B) Each other cancer.

"(e) Required Provisions for First Contract.—(1) The first contract entered into under subsection (c) of this section shall provide for the contract scientific organization—

"(A) to conduct as comprehensive a survey and evaluation as is practicable of the completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that herbicide agents have on humans or other animals that have been exposed to such agents; and

"(B) make its determinations and estimates on the basis of the results of such survey and evaluation.

"(2) The contract scientific organization shall conduct the survey and evaluation referred to in paragraph (1)(A) of this subsection through a panel composed of recognized experts in toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of such survey shall be subject to appropriate peer review.

"(f) Required Contract Provisions Relating to Periodic Determinations of the Secretary.—A contract entered into under subsection (c) of this section in connection with the Secretary's periodic determinations under subsection (b)(2) of this section shall require a contract scientific organization—

"(1) to conduct as comprehensive a survey and evaluation as is practicable of the scientific studies, evidence, and information referred to in subsection (e)(1)(A) of this section that have become available since the last such survey and evaluation under this section; and

"(2) make its determinations and estimates on the basis of the results of such survey and evaluation and all other surveys and evaluations conducted for the purposes of this section.

"(g) REPORTS OF CONTRACT SCIENTIFIC ORGANIZATIONS.—(1) Each contract scientific organization making determinations and estimates under this section shall transmit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives a written report regarding its determinations and estimates.

"(2) Each report shall contain—

"(A) the name of each disease (if any) determined to have positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

"(B) the name of each disease (if any) determined to have limited positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

"(C) the name of each disease (if any) determined to have insubstantial association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent; and

"(D) with respect to each disease named pursuant to clauses (A), (B), and (C) of this paragraph—

"(i) a discussion of the biological basis for the association;

"(ii) the contract scientific organization's estimate of the statistical significance of the association;

"(iii) the contract scientific organization's estimate of the relative risk for such disease in veterans who, during Vietnam service, were exposed to an herbicide agent; and

"(iv) the probability that the estimates referred to in subclauses (ii) and (iii) are correct.

"(3) Estimates and probabilities are not required under clauses (ii), (iii), and (iv) of paragraph (2)(D) of this subsection when the available data do not permit meaningful estimates and probabilities.

"(4)(A) If a contract scientific organization determines that a disease has positive association with the biological effects of exposure to an herbicide agent used in Vietnam, such organization shall determine whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide agent in Vietnam was exposed to such agent under the circumstances necessary for such biological effects.

"(B) If a contract scientific organization determines that there is no such reasonable basis, the organization shall state that determination in a report under this subsection and include in such report—

"(i) a description of the evidence that supports such determination;

"(ii) a description of the evidence (if any) that supports alternative conclusions; and

"(iii) a full discussion of the organization's reasons for such determination, including a discussion of the reasons for the organization's determination that the evidence referred to in clause (i) of this subparagraph outweighs the evidence (if any) referred to in clause (ii) of this subparagraph.

"(C) A determination with respect to reasonable basis is not required under subparagraph (A) of this paragraph when the available data do not permit a meaningful determination.

"(5) The first report under this subsection shall be transmitted to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives on or before the date one year after the date of the enactment of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1990.

"(h) ACTIONS OF THE SECRETARY AFTER RECEIVING THE FIRST REPORT.—(1) Not later than 60 days after the date on which the Secretary receives the first report under subsection (g) of this section, the Secretary shall—

"(A) for the purpose of subsection (b)(1) of this section—

"(i) determine in accordance with subsection (b)(3) of this section whether there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) if so, issue proposed regulations listing each such disease and specifying such agent;

"(B) transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the scientific basis for including each disease listed in such proposed regulations, and

"(C) if any disease listed in the first report under subsection (g) of this subsection as having positive association is not listed in such proposed regulations—

"(i) include in the report to the Committees on Veterans' Affairs the scientific basis for not including that disease in the proposed regulations; and

"(ii) publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite the report under subsection (g) and include in such notice a discussion of such scientific basis.

"(2) Not later than 60 days after the date on which the Secretary issues any proposed regulations pursuant to paragraph (1) of this subsection, the Secretary shall issue final regulations under subsection (b) of this section. Such regulations shall be effective on the date of issuance.

"(i) Actions of the Secretary After Receiving a Periodic Report.—(1) Upon receiving a contract scientific organization's report after a periodic survey and evaluation conducted for the purpose of subsection (b)(2) of this section, the Secretary shall—

"(A) determine in accordance with subsection (b)(3) of this section whether—

"(i) any disease named in such report not listed in regulations under subsection (b) of this section has positive association with the biological effects of exposure to an herbicide agent in Vietnam; and

"(ii) any disease listed in such regulations does not have positive association with such effects; and

"(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Secretary's determinations under clause (A) of this paragraph and the scientific bases for such determinations.

"(2)(A) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (1)(B) of this subsection, the Secretary shall prescribe or revise regulations, as the case may be, pursuant to subsection (b) of this section as may be necessary to reflect the Secretary's determinations included in that report. The regulations or revisions of regulations, as the case may be, shall take effect 30 days after the date on which the Secretary issues the proposed regulations or revisions, as the case may be.

"(B) If any disease listed in a periodic report under subsection (g) of this section as having positive association is not listed in such regulations or revisions of regulations, as the case may be, the Secretary shall, not later than 60 days after transmitting a report under subparagraph (A) of this paragraph, publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite such report and include in such notice a discussion of the scientific basis for not including that disease in such regulations or revisions.

"(j) Effect of Removal of Disease From Regulations.—Whenever a disease is removed from regulations pursuant to paragraph (2) of subsection (i) of this section as a result of a determination under paragraph (1)(A)(ii) of such subsection—

"(1) any veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) of this section before the effective date of the removal shall continue to be entitled to receive compensation on such basis; and

"(2) any survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumption shall continue to be entitled to receive dependency and indemnity compensation on such basis.

"(k) Limitation on Contract Authority.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

"(l) Termination of Effectiveness of This Section.—(1) Subsections (b) through (i) and (k) of this section shall cease to be effective 10 years after the first day of the fiscal year in which a contract scientific organization transmits to the Secretary the first report under subsection (g) of this section.

"(2) Paragraph (1) of this subsection shall not affect the continued effectiveness of—

"(A) subsection (a) of this section and the regulations referred to in such subsection; and

"(B) subsection (j) of this section.

"(m) Definitions.—For the purposes of this section:

"(1) The term 'Vietnam veteran' means a veteran who performed Vietnam service.

"(2) The term 'Vietnam service' means active military, naval, or air service in Vietnam during the Vietnam era.

"(3) The term 'herbicide agent' means an agent in an herbicide used in support of United States and allied military operations in Vietnam during the Vietnam era.

"(4) The term 'biological effect', with respect to exposure to an herbicide agent, means—

"(A) each known biological effect of such exposure on humans, including those biological effects resulting from relevant host and environmental factors; and

"(B) each biological effect of such exposure on humans that it is reasonable to infer on the basis of the known biological effects of such exposure on appropriate animal models.

"(5) The term 'positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence for the association is equal to or outweighs the credible evidence against the association.

"(6) The term 'limited positive', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence against the association outweighs the credible evidence for the association but that there is substantial credible evidence for the association.

"(7) The term 'insubstantial', with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that there is some credible evidence for the association but the evidence is not substantial.

"(8) The term 'relative risk', with respect to a report of a contract scientific organization for the purposes of subsection (g) of this section, shall have the meaning determined by such organization and specified in such report.

"(9) The term 'contract scientific organization', with respect to a contract under this section, means—

"(A) the National Academy of Sciences; or

"(B) in the event that the Secretary determines that the National Academy of Sciences is unwilling to enter into such contract, any other appropriate private nonprofit scientific organization which has appropriate expertise and has no connection with the Department of Veterans Affairs and which the Secretary identifies to the Committees on Veterans' Affairs of the Senate and the House of Representatives in a written notification received by such committees at least 90 days before the date on which such contract is entered into.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 312 the following new item:

"312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents.".

(c) CONFORMING AMENDMENT.—Section 313 of title 38, United States Code, is amended by inserting "or 312A" after "section 312" each place it appears.

SEC. 121. RESULTS OF EXAMINATIONS AND TREATMENT OF VETERANS FOR DISABILITIES RELATED TO EXPOSURE TO CERTAIN HERBICIDES OR TO SERVICE IN VIETNAM.

(a) IN GENERAL.—The Secretary of Veterans Affairs shall compile and analyze, on a continuing basis, all clinical data that (1) is obtained by the Department of Veterans Affairs in connection with examinations and treatment furnished to veterans by the Department after November 3, 1981, by reason of eligibility provided in section 610(e)(1)(A) of title 38, United States Code, and (2) is likely to be scientifically useful in determining the association, if any, between the disabilities of veterans referred to in such section and exposure to dioxin or any other toxic substance referred to in such section or between such disabilities and active military, naval, or air service in Vietnam during the Vietnam era.

(b) ANNUAL REPORT.—The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report containing—

(1) the information compiled in accordance with subsection (a);

(2) the Secretary's analysis of such information;

(3) a discussion of the types and incidences of disabilities identified by the Department of Veterans Affairs in the case of veterans referred to in subsection (a);

(4) the Secretary's explanation for the incidence of such disabilities;

(5) other explanations for the incidence of such disabilities considered reasonable by the Secretary;

(6) the Secretary's views on the scientific validity of drawing conclusions from the incidence of such disabilities, as evidenced by the data compiled under subsection (a), about any association between such disabilities and exposure to dioxin or any other toxic substance referred to in section 610(e)(1)(A) of title 38, United States Code, or between such disabilities and active military, naval, or air service, in Vietnam during the Vietnam era; and

(7) the evaluation of such report submitted by the Director of the Office of Technology Assessment pursuant to subsection (c)(2).

(c) CONSULTATION WITH OTA.—(1) The Secretary of Veterans Affairs shall consult with the Director of the Office of Technology Assessment before compiling and analyzing any information under this section and shall submit each annual report required by subsection (b) to the Director before submitting such report to the committees referred to in such subsection.

(2) The Director of the Office of Technology Assessment shall review each annual report submitted under paragraph (1) and transmit to the Secretary of Veterans Affairs the Director's evaluation of the content of the report.

(d) FIRST REPORT.—The first report under subsection (b) shall be submitted one year after the date of the enactment of this Act.

SEC. 125. TISSUE ARCHIVING SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—For the purpose of facilitating future scientific research on the effects of exposure of veterans to dioxin and other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era, the Secretary of Veterans Affairs shall establish and maintain a system for the collection and storage of voluntarily contributed samples of blood and tissue of veterans who performed active military, naval, or air service in Vietnam during the Vietnam era. The system may be administered by the Department of Veterans Affairs or under a contract awarded by the Secretary, whichever is more cost-effective.

(b) SECURITY OF SPECIMENS.—The Secretary shall ensure that the tissue is collected and stored under physically secure conditions and that the tissue is maintained in a condition that is useful for research referred to in subsection (a).

(c) AUTHORIZED USE OF SPECIMENS.—The Secretary may make blood and tissue available from the system for research referred to in subsection (a) in a manner consistent with the privacy rights and interests of the blood and tissue donors.

(d) LIMITATIONS ON ACCEPTANCE OF SAMPLES.—The Secretary may prescribe such limitations on the acceptance and storage of blood and tissue samples as the Secretary considers appropriate consistent with the purpose specified in the first sentence of subsection (a).

(e) CONSULTATION REQUIREMENTS.—(1) To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences, the Secretary shall consult with the National Academy of Sciences regarding the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

(2) In the event that the National Academy of Sciences does not enter into an agreement for consultation under paragraph (1), the Secretary shall consult with the Director of the Office of Technology Assessment on the establishment and maintenance of the tissue archiving system under this section, including any limitation to be prescribed under subsection (d).

(f) CONTRACT AUTHORITY SUBJECT TO APPROPRIATION.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 126. SCIENTIFIC RESEARCH FEASIBILITY STUDIES PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Veterans Affairs shall establish a program to provide for the conduct of studies of the feasibility of conducting additional scientific research on—

(1) health hazards resulting from exposure to dioxin;

(2) health hazards resulting from exposure to other toxic agents in herbicides used in support of United States and allied military operations in Vietnam during the Vietnam era; and

(3) health hazards resulting from active military, naval, or air service in Vietnam during the Vietnam era.

(b) PROGRAM REQUIREMENTS.—(1) Under the program established pursuant to subsection (a), the Secretary shall, pursuant to criteria prescribed pursuant to paragraph (2), award contracts or furnish financial assistance to non-Government entities for the conduct of studies referred to in subsection (a).

(2) The Secretary shall prescribe criteria for (A) the selection of entities to be awarded contracts or to receive financial assistance under the program, and (B) the approval of studies to be conducted under such contracts or with such financial assistance.

(c) Report.—The Secretary shall promptly report the results of studies conducted under the program to the Committees on Veterans' Affairs of the Senate and the House of Representatives.

(d) Consultation With the National Academy of Sciences.—To the extent provided under any agreement entered into by the Secretary and the National Academy of Sciences (1) the Secretary shall consult with the National Academy of Sciences regarding the establishment and administration of the program under subsection (a) and (2) the National Academy of Sciences shall review the studies conducted under contracts awarded pursuant to the program and the studies conducted with financial assistance furnished pursuant to the program. The agreement shall require the National Academy of Sciences to submit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives any recommendations that the National Academy of Sciences considers appropriate regarding any studies reviewed under the agreement.

(e) Authority Subject to Appropriation.—The authorities to enter into contracts and to furnish financial assistance provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

SEC. 127. OUTREACH SERVICES.

Section 1204(a) of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100-687; 102 Stat. 4125) is amended—

(1) in clause (1), by striking out ", as such information on health risks becomes known";

(2) by redesignating clauses (1) and (2) as clauses (A) and (B), respectively;

(3) by inserting "(1)" after "Program.—"; and

(4) by adding at the end the following new paragraph:

"(2) The Secretary of Veterans Affairs shall annually furnish updated information on health risks described in paragraph (1)(A) to veterans referred to in paragraph (1).".

SEC. 128. REPORT RELATING TO RESEARCH ON TREATMENTS FOR EXPOSURE TO DIOXIN AND OTHER TOXIC AGENTS.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing a discussion of the research being conducted to identify and develop treatments for physiological absorption of dioxin and other toxic agents similar to the toxic agents in herbicides used in support of United States and allied operations in Vietnam during the Vietnam era, including research relating to exposure to dioxin and other toxic agents outside Vietnam.

SEC. 129. EXTENSION OF HEALTH-CARE ELIGIBILITY BASED ON AGENT ORANGE OR IONIZING RADIATION EXPOSURE.

Section 610(e)(3) is amended by striking out "December 31, 1990" and inserting in lieu thereof "December 31, 1993".

SEC. 130. RANCH HAND STUDY AMENDMENTS.

Section 1205 of the Veterans' Benefits Improvement Act of 1988 (division B of Public Law 100-687; 102 Stat. 4126) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively;

(2) by inserting after subsection (b), the following new subsection (c):

"(c) Advisory Relationship.—The Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may consult directly with and provide information and recommendations directly to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information."; and

(3) in subsection (d), as redesignated by clause (1)—

(A) by adding at the end of paragraph (1) the following: "The schedule shall provide for the preparation and submission of annual reports and a final report."; and

(B) in paragraph (4), by inserting "in" after "report referred to".

SEC. 131. DEFINITIONS.

In this title—

(1) the terms "veteran", "service-connected", "active military, naval, or air service", and "Vietnam era" shall have the meanings given those terms in paragraphs (2), (16), (24), and (29), respectively, of section 101 of title 38, United States Code;

(2) the term "disability" refers to a disability within the meaning of chapter 11 of such title; and

(3) the term "soft-tissue sarcoma" means any sarcoma other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma.

TITLE II—HEALTH CARE

PART A—MENTAL HEALTH

SEC. 201. CARE FOR COMBAT-THEATER VETERANS WITH SERVICE-RELATED POST-TRAUMATIC STRESS DISORDER.

(a) REQUIREMENT TO FURNISH CARE AND SERVICES.—(1) Section 602 is amended—

(A) by inserting "(a)" before "For"; and

(B) by adding at the end the following new subsections:

"(b)(1) Any veteran—

"(A) who, as determined by the Chief Benefits Director of the Department of Veterans Affairs in accordance with paragraph (2) of this subsection, served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, the Korean conflict, or the Vietnam era or in any other area during a period in which hostilities (as defined in subsection (c) of this section) occurred in such area, and

"(B) whom a mental health professional designated by the Chief Medical Director has diagnosed, following an examination of such veteran by such professional, to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) of this title even though such disorder has not been determined to be service-connected.

"(2) In the case of a veteran who is diagnosed as suffering from post-traumatic stress disorder, a determination of whether the veteran satisfies the service requirement related to such disorder set out in paragraph (1) of this subsection shall be made by the most expeditious means practicable.

"(c) For the purposes of subsection (b) of this section, the term 'hostilities' means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.".

(2)(A) The heading of such section is amended to read as follows:

"§ 602. Special provisions relating to mental illness disabilities".

(B) The item relating to such section in the table of sections at the beginning of chapter 17 is amended to read as follows:

"602. Special provisions relating to mental illness disabilities.".

(b) TIMELINESS OF EVALUATION AND VERIFICATION OF STATUS.—Section 612A is amended—

(1) in subsection (h)—

(A) by striking out "Administrator" and "Veterans' Administration" each place it appears and inserting in lieu thereof "Secretary" and "Department", respectively; and

(B) in paragraph (5), by striking out "the Secretary considers" and inserting in lieu thereof "such Secretary considers";

(2) by redesignating subsection (i) as subsection (j) and, in such subsection, by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department"; and

(3) by inserting after subsection (h) the following new subsection (i):

"(i) Whenever a veteran is referred by a center to a Department general health-care facility for a determination regarding such veteran's eligibility for care and services under section 602(b) of this title, the veteran shall be evaluated for diagnostic purposes within 7 days after the date on which the referral is made.".

SEC. 202. ELIGIBILITY FOR SERVICES AT VET CENTERS.

Subsection (a) of section 612A is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Upon the request of any veteran who served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, or the Korean conflict or in any other area during a period in which hostilities (as defined in subparagraph (B) of this paragraph) occurred in such area, the Secretary may furnish counseling to such veteran in order to assist the veteran to overcome any psychological problems associated with such service. The counseling shall include a general mental and psychological assessment to ascertain whether the veteran has mental or psychological problems associated with such service.

"(B) For the purposes of subparagraph (A) of this paragraph, the term 'hostilities' means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.".

SEC. 203. MENTAL ILLNESS RESEARCH, EDUCATION, AND CLINICAL CENTERS.

(a) IN GENERAL.—Section 4101 is amended by adding at the end the following new subsection:

"(g)(1) The purposes of this subsection are (A) to improve and expand the capability of Department of Veterans Affairs health-care facilities to respond with the most effective and appropriate services possible to the needs of veterans suffering from mental illness, especially from service-related conditions, and (B) to advance scientific knowledge regarding mental illness, especially service-related conditions, and regarding such needs and the methods of meeting them by facilitating higher quality care for eligible veterans suffering from mental illness, especially from service-related conditions, through research, the education and training of health personnel in the provision of health care to such veterans, and the development of improved models of clinical services for eligible veterans suffering from mental illness.

"(2)(A) In order to carry out the purposes of this subsection, the Secretary, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five health-care facilities of the Department of Veterans Affairs (at least one of which shall be designated before July 1, 1991) as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

"(B) In designating facilities as the locations for centers under subparagraph (A) of this paragraph, the Secretary, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

"(C) The Secretary may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Secretary, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

"(i) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such center so as to provide such residents with training in the diagnosis and treatment of mental illness;

"(ii) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such center so as to provide such students with training in the diagnosis and treatment of mental illness;

"(iii) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

"(iv) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

"(v) a policymaking advisory committee composed of appropriate mental health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

"(vi) the capability to conduct effectively evaluations of the activities of such center.

"(3) There are authorized to be appropriated for the basic support of [illegible] research and education and training activities of the centers established pursuant to paragraph (1) of this subsection $3,125,000 for fiscal year 1991 and $6,250,0[illegible] for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Department of Veterans Affairs medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

"(4) Activities of clinical and scientific investigation at each center shall be eligible to compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

"(5) The Chief Medical Director shall ensure that research activities carried out through such centers include an appropriate emphasis on the psychosocial dimension of mental illness and on models for furnishing care and treatment to veterans suffering from mental illness.

"(6) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of such centers is disseminated throughout the Veterans Health Services and Research Administration through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter II of chapter 73 of this title and other means.

"(7) The official within the Central Office of the Veterans Health Services and Research Administration responsible for mental health and behavioral sciences matters shall be responsible for the supervision of the operation of the centers established pursuant to paragraph (1) of this subsection.".

(b) REPORTS.—Not later than February 1 of each of 1992, 1993, and 1994, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience during the prior fiscal year under the centers established pursuant to the amendment made by subsection (a). Each such report shall contain—

(1) descriptions of (A) activities carried out at each center and the funding provided for such activities, (B) the advances made at each center in research, education and training, and clinical activities, and (C) the efforts to disseminate throughout the Veterans Health Services and Research Administration useful information produced by such activities; and

(2) the Secretary's evaluations of the effectiveness of the centers in fulfilling the purposes of subsection (g) of section 4101 of title 38, United States Code, as added by subsection (a).

SEC. 204. SPECIAL COMMITTEE ON POST-TRAUMATIC STRESS DISORDER.

(a) EVALUATION OF STUDY OF POSTWAR PSYCHOLOGICAL PROBLEMS OF VIETNAM VETERANS.—(1) Not later than February 15, 1991, February 15, 1992 and February 15, 1993, the Special Committee on Post-Traumatic Stress Disorder (hereinafter in this section referred to as the "Special Committee") established pursuant to section 110(b)(1) of the Veterans' Health Care Act of 1984 (Public Law 98–528; 98 Stat. 2691) shall submit concurrently to the Secretary of Veterans Affairs and the Committees on Veterans' Affairs of the Senate and House of Representatives (hereinafter in this section referred to as the "Committees") a report setting forth the Special Committee's evaluation of the results of the study required by section 102 of the Veterans' Health Care Amendments of 1983 (Public Law 98–160; 97 Stat. 994). Such report shall include the Special Committee's—

(A) overall evaluation of the conduct, validity, and meaning of the study;

(B) assessment of the capability of the Department of Veterans Affairs to meet the need for diagnosing and treating veterans for post-traumatic stress disorder and for other psychological problems in readjusting to civilian life, as estimated in the results of such study;

(C) evaluation of the Secretary's report on the study; and

(D) recommendations for any further or follow-up research on the matters addressed in the study.

(2) Not later than 30 days after receiving the Special Committee's report under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

(b) UPDATES OF REPORTS UNDER SECTION 110(c) OF PUBLIC LAW 98-528.—(1) Not later than February 1 of each of 1991 and 1992, the Special Committee shall concurrently submit to the Secretary and the Committees a report containing information updating the reports submitted to the Secretary under section 110(e) of the Veterans' Health Care Act of 1984 (Public Law 98-528; 98 Stat. 2693), together with any additional information the Special Committee considers appropriate regarding the overall efforts of the Department of Veterans Affairs to meet the needs of veterans with post-traumatic stress disorder and other psychological problems in readjusting to civilian life.

(2) Not later than 60 days after receiving each of the Special Committee's reports under paragraph (1), the Secretary shall submit to the Committees any comments concerning the report that the Secretary considers appropriate.

SEC. 205. FUNDING FOR POST-TRAUMATIC STRESS DISORDER PROGRAMS.

In the documents providing detailed information on the budget for the Department of Veterans Affairs that the Secretary of Veterans Affairs submits to the Congress in conjunction with the President's budget submission for fiscal year 1992 and for fiscal year 1993 pursuant to section 1105 of title 31, United States Code, the Secretary shall identify the amounts in the appropriations requests for Department accounts that are estimated to be obligated for—

(1) the payment of compensation to veterans for disabilities resulting from post-traumatic stress disorder (hereinafter in this section referred to as "PTSD") that is service-connected;

(2) the treatment of veterans by or at the expense of the Department for PTSD related to their active-duty service, including specific designation of funds for the treatment of PTSD—

(A) in PTSD programs designated pursuant to section 110(a)(1) of Public Law 98-528;

(B) in inpatient psychiatric programs and outpatient mental health programs other than such designated PTSD programs;

(C) in readjustment counseling programs pursuant to 612A of title 38, United States Code; and

(D) under contract through non-Department sources furnishing (i) readjustment counseling services pursuant to section 612A(e) of such title, (ii) mental health services pursuant to such section 612A(e), or (iii) mental health services pursuant to other authority, and described in the first annual report submitted pursuant to section 110(e)(1) of Public Law 98-528 as having been proposed by the Special Committee on Post-Traumatic Stress Disorder;

(3) education, training, and research at—

(A) the National Center on Post-Traumatic Stress Disorder established under section 110(c) of Public Law 98-528;

(B) any centers of mental illness research, education, and clinical activities that may be established at Department medical centers; and

(C) other Department research facilities; and

(4) the operation of the National Center on Post-Traumatic Stress Disorder.

PART B—GENERAL HEALTH

SEC. 211. ELIGIBILITY FOR PROSTHETIC DEVICES AND CERTAIN OTHER MEDICAL ITEMS.

(a) IN GENERAL.—Section 601(6)(A)(i) is amended by striking out "(except under the conditions described in section 612(f)(1)(A)(i) of this title)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date on which the Secretary of Veterans Affairs submits to the Committees on Veterans' Affairs of the Senate and the House of Representatives copies of the Secretary's written determination that implementation of that amendment will not result in substantial delay, or contribute substantially to delays, in the furnishing of prosthetic items in connection with the treatment of disabilities that are service connected (within the meaning provided in section 101(16) of title 38, United States Code) or in the denial of such items in connection with the treatment of such disabilities.

SEC. 212. ELIGIBILITY FOR OUTPATIENT DENTAL CARE.

Paragraph (1) of section 612(b) is amended—

(1) by striking out "or" at the end of subparagraph (F);

(2) by striking out the period at the end of subparagraph (G) and inserting in lieu thereof "; or"; and

(3) by adding after subparagraph (G) the following new subparagraph:

"(H) medically necessary in preparation for hospital admission or for a veteran otherwise receiving care or services under this chapter.".

SEC. 213. INCREASE IN MAXIMUM LIMITATIONS ON HOME HEALTH SERVICES.

Section 617(a)(2) is amended—

(1) in subparagraph (A), by striking out "$2,500" and inserting in lieu thereof "$5,000"; and

(2) in subparagraph (B), by striking out "$600" and inserting in lieu thereof "$1,200".

SEC. 214. CONTRACT AUTHORITY FOR ALCOHOL OR DRUG-ABUSE TREATMENT.

Section 620A is amended by striking out subsection (e) and redesignating subsections (f) and (g) as subsections (e) and (f).

SEC. 215. EXTENSION OF AUTHORITY TO MAKE CONTRACTS AND GRANTS TO THE VETERANS MEMORIAL MEDICAL CENTER, REPUBLIC OF THE PHILIPPINES.

Section 632 is amended—

(1) in subsection (a), by striking out "1990" and inserting in lieu thereof "1995"; and

(2) in subsection (b)(1)—

(A) by striking out "1990" and inserting in lieu thereof "1995"; and

(B) by adding at the end the following new sentence: "Of the amount appropriated for such purpose for each fiscal year after fiscal year 1990, $50,000 shall be used for the purpose of educating and training personnel of the Veterans Memorial Medical Center.".

SEC. 216. CHILD-CARE CENTERS.

Section 4209(c) is amended—

(1) by striking out paragraph (2) and inserting in lieu thereof the following:

"(2) may convert space furnished under clause (1) of this subsection for use as the child-care center without reimbursement;";

(2) by redesignating clauses (3), (4), and (5) as clauses (4), (5), and (6), respectively; and

(3) by inserting after clause (2), as amended by paragraph (1) of this section, the following new clause (3):

"(3) may provide, on a reimbursable basis, other items necessary for the operation of the center, including furniture, office machines and equipment, and telephone service, except that the Secretary may furnish basic telephone service and surplus furniture and equipment without reimbursement;".

SEC. 217. COMMUNITY-BASED HOUSING FOR CERTAIN VETERANS WHO ARE HOMELESS OR RECOVERING FROM SUBSTANCE ABUSE OR MENTAL ILLNESS DISABILITIES.

(a) EXTENSION AND EXPANSION OF AUTHORITY TO SELL ACQUIRED PROPERTIES FOR OCCUPANCY BY HOMELESS AND CERTAIN OTHER VETERANS.—Section 9 of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Public Law 100-198; 38 U.S.C. 1820 note) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by inserting "and to provide transitional housing for veterans recovering from substance abuse or mental illness disabilities" after "shelter";

(B) in paragraphs (2) and (3)(B)(iii), by striking out "best interests of homeless veterans" each place it appears and inserting in lieu thereof "best interests of veterans who are to occupy the property"; and

(C) in paragraph (3)(B)(i), by inserting "or as transitional housing for veterans who, at the time of entering the housing, are being furnished services by the Secretary, directly or by contract, for alcohol or drug dependence or abuse disabilities or mental illness disabilities or who, at any time within 90 days preceding the date of entering the housing, have been furnished such services by the Secretary for such purpose" after "families";

(2) in subsection (c) by striking out "October 1, 1990" and inserting in lieu thereof "December 31, 1993"; and

(3) in subsection (d)—

(A) by inserting "and March 1 of each of the next three years" after "March 1, 1990," and

(B) by striking out ", through December 31, 1989," and inserting lieu thereof "through December 31 of the preceding year" after "section".

(b) Transitional Group Residences For Veterans Recovering From Substance Abuse Disabilities.—(1) Section 620A is amended by adding at the end the following new subsections:

"(g)(1) To assist veterans in recovering from alcohol or drug dependence or abuse disabilities, there is hereby established in the Treasury of the United States a revolving fund to be known as the 'Transitional Housing Fund'. The Secretary shall use the proceeds of the Fund to make loans authorized under subsection (i) of this section to nonprofit entities for the purpose of assisting such entities in meeting the costs of establishing programs for the provision of transitional residences for recovering veterans.

"(2) For the purposes of this paragraph, the term 'recovering veterans' means veterans who, at the time of entering the residences, are being furnished services by the Secretary, directly or by contract, for alcohol or drug dependence or abuse disabilities or who, at any time within 90 days preceding the date of entering the residences, have been furnished such services by the Secretary for such purpose.

"(h) On October 1, 1990, the Secretary of the Treasury shall transfer $100,000 from the revolving fund established pursuant to section 4204 of this title to the Transitional Housing Fund. After that date, the Secretary of the Treasury shall transfer from the revolving fund established pursuant to that section to the Transitional Housing Fund such amounts, not to exceed a total of $900,000, as the Secretary of Veterans Affairs may specify.

"(i) The Secretary shall make loans from the Transitional Housing Fund for the purpose described in subsection (g)(1) of this section. In making loans under this subsection, the Secretary shall ensure that—

"(1) each loan is repaid within two years after the date on which the loan is made;

"(2) each loan is repaid through monthly installments and that a reasonable penalty is assessed for each failure to pay an installment by the date specified in the loan agreement involved; and

"(3) each loan is made only to a nonprofit private entity which agrees that, in the operation of each residence established with the assistance of the loan—

"(A) the use of alcohol or any illegal drug in the residence will be prohibited;

"(B) any resident who violates the prohibition in subclause (A) of this clause will be expelled from the residence;

"(C) the costs of maintaining the residence, including fees for rent and utilities, will be paid by the residents;

"(D) the residents will, through a majority vote of the residents, otherwise establish policies governing the conditions of residence, including the manner in which applications for residence are approved; and

"(E) the residence will be operated solely as a residence for not less than six veterans.

"(j) No loan may be made under this section for more than $4,000 and not more than $4,000 in total loans may be made for the establishment of any particular transitional residence.

"(k) All loan repayments and penalties collected under this section shall be deposited to the credit of the Transitional Housing Fund.

"(l) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall issue guidelines for the operation of residences described in subsection (g)(1) of this section.

"(m) The Secretary may enter into contractual agreements with private nonprofit corporations for the purposes of collecting on behalf of the Secretary payments on the loans described in subsection (g)(1) of this section.".

(2) The amendment made by paragraph (1) shall take effect on October 1, 1990.

SEC. 218. EXPANDED SERVICES FOR HOMELESS VETERANS.

(a) Assessment and Plan.—(1)(A) The Secretary shall require the director of each medical center or the director of each regional benefits office to make an assessment of the needs of homeless veterans living within the area served by the director of the medical center concerned or the region of the director of the region concerned, as the case may be.

(B) Such assessments shall identify the needs of homeless veterans with respect to the following areas:

(i) Health care.

(ii) Education and training.

(iii) Employment.
(iv) Shelter.
(v) Counseling.
(vi) Outreach services.

(C) Such assessments shall also indicate the extent to which the needs referred to in clauses (i) through (vi) of subparagraph (B) are being met adequately by the programs of the Department of Veterans Affairs, of other departments and agencies of the Federal Government, of State and local governments, and of nongovernmental organizations.

(D) Such assessments shall be made in consultation with all facilities of the Department of Veterans Affairs serving veterans in the appropriate service area and with community-based organizations that have experience working with homeless persons in that area.

(E) Such assessments shall be carried out in accordance with uniform procedures and guidelines prescribed by the Secretary.

(2)(A) The director of each medical center shall develop a plan for each of the fiscal years 1991, 1992, and 1993 for the provision of outreach services and other services to meet the needs that are identified in the assessment referred to in paragraph (1)(B) on the part of homeless veterans in the area served by the medical center concerned. The director of each medical center shall develop such plans in consultation with the director of the appropriate regional benefits office, the heads of other facilities of the Department of Veterans Affairs, and the Director for Veterans Employment and Training within the State concerned.

(B) Each plan developed pursuant to subparagraph (A) shall--

(i) describe the steps to be taken by the Department of Veterans Affairs to meet, directly or otherwise, those needs of homeless veterans that are identified in the assessment referred to in paragraph (1) as not being adequately met by existing programs, and

(ii) provide that the director of the medical center concerned or other official of the Department of Veterans Affairs will take appropriate action to meet those needs, to the maximum extent practicable, through existing programs and available resources.

(C) The director of each medical center shall coordinate the development of the plan for the area served by the medical center concerned with other programs of the Department of Veterans Affairs, other departments and agencies of the Federal Government, State and local governments, and community-based organizations and other private entities that provide services to homeless persons.

(D) Each plan shall include a list of all public and private programs that provide assistance to homeless persons or homeless veterans in the area concerned and shall describe the services offered by those programs.

(3) The director of each medical center shall be responsible for carrying out the plan developed with respect to the area served by that medical center. In carrying out such plan, the director shall take appropriate steps to seek to inform each homeless veteran, and each veteran who is at risk of becoming homeless, of the services available to the veteran within the area served by the medical center.

(4) The director of each medical center shall disseminate to other departments and agencies of the Federal Government, all State and local governments, and all private entities that provide services to homeless persons or homeless veterans within the area served by the medical center information regarding the services provided to homeless veterans by the medical center or other facility of the Department of Veterans Affairs.

(b) PILOT PROGRAM FOR PROVIDING DOMICILIARY CARE FOR HOMELESS VETERANS.—(1) The Secretary shall conduct a pilot program to determine the effectiveness of providing, through existing community-based organizations, domiciliary care (including medical services) to homeless veterans eligible for such care from the Department of Veterans Affairs under other provisions of law. In carrying out the program, the Secretary may enter into contracts with community-based organizations that have demonstrated effectiveness in providing relevant services to homeless persons. The Secretary shall conduct the program at not more than 15 locations throughout the United States.

(2) In entering into contracts under this section, the Secretary shall give preference to community-based organizations that offer the most comprehensive services, particularly services that meet needs identified in the assessments referred to in subsection (a)(1) as not being adequately met by existing programs.

(3) There is authorized to be appropriated to carry out this subsection $1,500,000 for each of fiscal years 1991, 1992, and 1993.

(4) If the Secretary determines that the pilot program conducted pursuant to paragraph (1) is effectively meeting the domiciliary care needs of homeless veterans and that additional funds are needed for that program, the Secretary may transfer funds appropriated to carry out section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257), as amended by subsection (e), to the account available to carry out the pilot program provided for in this subsection, except that no amount may be transferred in any fiscal year that would reduce the amount available for expenditure under such section 801 below an amount equal to the amount expended under that section in the preceding fiscal year. Funds transferred under this paragraph shall be available for the same period for which originally appropriated.

(c) Authority To Accept Donations for Certain Programs.—The Secretary may accept donations of funds and services for the purposes of providing one-stop, non-residential services and mobile support teams and for expanding the medical services to homeless veterans eligible for such services from the Department of Veterans Affairs.

(d) Definitions.—As used in subsections (a), (b), and (c):

(1) The term "Secretary" means the Secretary of Veterans Affairs.

(2) The term "medical center" means a medical center of the Department of Veterans Affairs.

(3) The term "regional benefits office" means a regional benefits office of the Department of Veterans Affairs.

(4) The term "veteran" has the same meaning given such term by section 101(2) of title 38, United States Code.

(5) The term "homeless" has the same meaning given such term by section 103(a), as limited by section 103(c), of the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77; 101 Stat. 485).

(e) Extension of Certain Programs for Homeless Veterans.—(1) Section 801 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Public Law 100-628; 102 Stat. 3257) is amended—

(A) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) Authorization of Appropriations.—There is hereby authorized to be appropriated to the Department of Veterans Affairs $30,000,000 for each of the fiscal years 1989 and 1990; $50,000,000 for fiscal year 1991; $57,500,000 for fiscal year 1992; and $65,000,000 for fiscal year 1993. Funds appropriated pursuant to this section shall be in addition to any funds appropriated pursuant to any other authorizations (whether definite or indefinite) for such fiscal years.";

(B) in subsection (b)—

(i) by inserting "(1)" after "Domiciliary Care.—";

(ii) by striking out "50 percent" and inserting in lieu thereof "the amounts specified in paragraph (2)";

(iii) by redesignating clauses (1) and (2) as clauses (A) and (B); and

(iv) by adding at the end the following new paragraph:

"(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

"(A) For fiscal year 1989, $15,000,000.
"(B) For fiscal year 1990, $15,000,000.
"(C) For fiscal year 1991, $20,000,000.
"(D) For fiscal year 1992, $22,500,000.
"(E) For fiscal year 1993, $25,000,000."; and

(C) in subsection (c)—

(i) by inserting "(1)" after "Homeless Veterans.—";

(ii) by striking out "50 percent" and inserting in lieu thereof "the amounts specified in paragraph (2)"; and

(iii) by adding at the end the following new paragraph:

"(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

"(A) For fiscal year 1989, $15,000,000.
"(B) For fiscal year 1990, $15,000,000.
"(C) For fiscal year 1991, $30,000,000.
"(D) For fiscal year 1992, $35,000,000.
"(E) For fiscal year 1993, $40,000,000.".

(2) Extension of Program for Mentally Ill Homeless Veterans.—Section 115(d) of the Veterans' Benefits and Services Act of 1988 (38 U.S.C. 612 note) is amended by striking out "1992" and inserting in lieu thereof "1993".

(f) Report.—Not later than February 1, 1993, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of

Representatives a report containing an evaluation of the programs referred to in subsections (a), (b), and (c).

SEC. 219. EXTENSION OF PILOT PROGRAM OF MOBILE HEALTH CARE CLINICS.

Section 113(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 500) is amended—

(1) by striking out "and 1990" and inserting in lieu thereof a comma and "1990, and 1991"; and

(2) by adding at the end the following new sentence: "Funds appropriated to carry out the pilot program authorized by this section shall remain available until expended.".

SEC. 220. ADVISORY COMMITTEE ON PROSTHETICS AND SPECIAL-DISABILITIES PROGRAMS.

(a) ESTABLISHING OF ADVISORY COMMITTEE.—Chapter 3 is amended—

(1) by redesignating sections 223 and 224 as sections 224 and 225, respectively; and

(2) by inserting after section 222 the following new section 223:

"§ 223. Advisory Committee on Prosthetics and Special-Disabilities Programs

"(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Prosthetics and Special-Disabilities Programs (hereinafter in this section referred to as the 'Committee').

"(2) The members of the Committee shall be appointed by the Secretary and shall include—

"(A) appropriate representatives of veterans who use prosthetic devices;

"(B) individuals who are recognized experts in the fields of prosthetics engineering;

"(C) individuals engaged in prosthetics research;

"(D) individuals engaged in rehabilitative medicine;

"(E) individuals engaged in the clinical treatment of individuals who are users of prosthetic devices;

"(F) individuals engaged in clinical treatment in the Department's special-disabilities programs; and

"(G) such other individuals with pertinent expertise or experience as the Secretary may determine appropriate.

"(3) The Committee may also include, as ex officio members, individuals appointed from the Department.

"(4) The Secretary shall determine the total number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that the term of office of any such member may not exceed three years.

"(b)(1) It shall be the function of the Committee to advise the Secretary and the Chief Medical Director on all matters related to—

"(A) prosthetics and special-disabilities programs administered by the Secretary;

"(B) the coordination of programs of the Department for the development and testing of, and for information exchange regarding, prosthetic devices;

"(C) the coordination of Department and non-Department programs that involve the development and testing of prosthetic devices; and

"(D) the adequacy of funding for the prosthetics and special-disabilities programs of the Department.

"(2) The Secretary shall, on a regular basis, consult with and seek the advice of the committee on the matters described in paragraph (1) of this subsection.

"(c) Not later than January 15 of 1991, 1992, and 1994, the Committee shall submit to the Secretary and the Committees on Veterans Affairs' of the Senate and the House of Representatives a report on the effectiveness of the prosthetics and special-disabilities programs administered by the Secretary during the preceding fiscal year. Not more than 30 days after the date on which any such report is received by the Secretary, the Secretary shall submit a report to such committees commenting on the report of the advisory committee.

"(d) As used in this section, the term 'special-disabilities programs' includes all programs administered by the Department for spinal-cord-injured veterans, blind veterans, veterans who have lost or lost the use of extremeties, hearing-impaired veterans, and other veterans with serious incapacities in terms of daily life functions.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 3 is amended by striking out the items relating to sections 223 and 224 and inserting in lieu thereof the following:

"223. Advisory Committee on Prosthetics and Special-Disabilities Programs.
"224. Rulemaking: procedures and judicial review.
"225. Administrative settlement of tort claims.".

SEC. 221. SERVICES TO OVERCOME SERVICE-CONNECTED DISABILITIES AFFECTING PROCREATION.

(a) Definition of "Medical Services".—Clause (A) of section 601(6) is further amended to read as follows:

"(A)(i) surgical services, (ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing a veteran's procreative ability (but only if such services are furnished by contract, except for services which the Chief Medical Director determines that Department of Veterans Affairs facilities are fully capable of furnishing in a cost-effective manner), (iii) dental services and appliances as described in sections 610 and 612 of this title, (iv) optometric and podiatric services, (v) (in the case of a person otherwise receiving care or services under this chapter) preventive health-care services as defined in section 662 of this title, (vi) wheelchairs, artificial limbs, trusses and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the Secretary determines to be reasonable and necessary, and (vii) travel and incidental expenses pursuant to the provisions of section 111 of this title; and".

(b) Advisory Committee.—The Chief Medical Director of the Department of Veterans Affairs shall appoint an advisory committee to advise the Chief Medical Director on the exercise of authority to furnish services described in subclause (ii) of section 601(6)(A) of title 38, United States Code, as added by subsection (a). Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the advisory committee appointed under this subsection.

SEC. 222. COMPENSATED WORK THERAPY AND THERAPEUTIC RESIDENCE PILOT PROGRAM.

(a) Authorized Sources for Provision of Therapeutic Work.—Section 618(b)(1) is amended by striking out "contractual arrangements with private industry or other sources outside the Veterans' Administration" and inserting in lieu thereof "a contract or other arrangement with any appropriate source (whether or not an element of the Department of Veterans Affairs or of any other Federal entity)".

(b) Use of Revolving Fund.—The first sentence of section 618(c)(1) is amended by inserting before the period at the end "(including defraying the costs of travel and related expenses necessary to train and educate employees in the administration of services under such subsection)".

(c) Pilot Program.—(1) Subchapter II of chapter 17 is amended by inserting after section 618 the following new section:

"§ 618A. Compensated work therapy and therapeutic residence pilot program

"(a) During fiscal years 1991 through 1995, the Secretary shall conduct a compensated work therapy and therapeutic residence pilot program. The pilot program shall have two components as follows:

"(1) A component, under subsection (b) of this section, which provides for contracting with nonprofit corporations to furnish compensated work therapy in conjunction with the operation of therapeutic residences.

"(2) A component, under subsection (c) of this section, which provides for the direct operation of therapeutic residences in conjunction with the furnishing of compensated work therapy.

"(b)(1) Under the pilot program, the Secretary shall encourage and participate in the establishment of nonprofit corporations for the purpose of contracting with such nonprofit corporations to conduct compensated work therapy programs under the pilot program at not less than ten and not more than fifteen Department of Veterans Affairs medical centers operating such programs.

"(2) The Secretary may enter into a contract with a nonprofit corporation under the pilot program only if the corporation provides assurances satisfactory to the Secretary that it will operate a therapeutic residence for eligible veterans in conjunction with an existing compensated work therapy program at a medical center. The contract may remain in effect only as long as the corporation operates the therapeutic residence for eligible veterans in connection with the pilot program.

"(3) A contract with a nonprofit corporation under this subsection may provide for the Secretary to furnish the corporation (with or without consideration) in-kind services, including—

"(A) technical and clinical advice;

"(B) supervision of the activities of compensated work therapy participants in the rehabilitation of any property for use as a therapeutic residence under the contract and for possible later sale as a private residence; and

"(C) minor maintenance of and minor repairs to such a therapeutic residence.

"(4)(A) In order to assist a nonprofit corporation to purchase or lease any real property for the purpose of operating a therapeutic residence under the pilot program or to operate such a residence, the Secretary may lend the corporation up to the maximum amounts specified in subparagraphs (C) and (D), respectively, of this paragraph.

"(B) Loans authorized by this paragraph shall be paid out of sums in the fund.

"(C) The amount of a loan under this paragraph for the purchase or lease of real property may not exceed—

"(i) in the case of a purchase of real property for such use, the amount equal to 25 percent of the purchase price; or

"(ii) in the case of a lease of real property for such use, the amount of the rent for one year.

"(D) The amount of a loan under this paragraph for the operation of a therapeutic residence may not exceed an amount equal to the estimated amount, as approved by the Secretary, necessary for the operation of the residence for a period of six months.

"(E) A loan made to a nonprofit corporation under this paragraph—

"(i) shall be payable on demand;

"(ii) shall not bear interest for the first five years;

"(iii) after the first five years, shall bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury; and

"(iv) shall be subordinate to any mortgage loan entered into for purchase of the residence.

"(5) In the case of each nonprofit corporation to which a loan is made under paragraph (4) of this subsection for the purchase of real property, the pilot program contract with such corporation shall include a provision that requires the corporation—

"(A) to sell the real property if the corporation does not operate or ceases to operate a therapeutic residence on that property;

"(B) to pay the fund the sum of the unpaid balance of the loan and the amount equal to 50 percent of the excess, if any, of the sale price over the total amount paid by the corporation for the purchase and improvement of such real property; and

"(C) to use the proceeds of the sale of the property to pay the obligations imposed by clause (B) of this paragraph.

"(6)(A) The Secretary shall deposit in escrow any sums to be loaned to a nonprofit corporation under paragraph (4) of this subsection until the corporation demonstrates to the satisfaction of the Secretary that at least 25 percent of the net annual operating expenses of the corporation will be paid out of funds obtained from sources other than the Department of Veterans Affairs or will be satisfied by in-kind services obtained from such sources, or both. For the purpose of this subparagraph, the term 'net annual operating expenses' means the amount equal to the excess of the estimated amount of the annual expenses of operating the therapeutic residence or therapeutic residences to be acquired or operated with such escrow sums over the estimated annual rental income from eligible veterans residing in such residence or residences.

"(B) If, in the case of a corporation for which any amount is held in escrow pursuant to subparagraph (A) of this paragraph in connection with a contract awarded under the pilot program, the corporation fails to meet the requirements of such subparagraph within 18 months after the award of that contract, the corporation shall forfeit all rights to the amount so held in escrow, the escrow shall be terminated, and that amount shall be credited to the fund.

"(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall transfer to the Veterans Health Services and Research Administration not less than 10 residences acquired by the Department of Veterans Affairs in the administration of chapter 37 of this title.

"(B) Each property so transferred under this paragraph—

"(i) shall be located in an area suitable for meeting the need of the Department for a therapeutic residence under the pilot program; and "(ii) shall be leased, in accordance with subparagraph (C) of this paragraph, to a nonprofit corporation for operation as a therapeutic residence under the pilot program.

"(C) A lease of property under this paragraph—

"(i) shall provide for a lease period of not less than one and not more than three years and may include one or more options for renewal at the option of both parties for up to three additional years;

"(ii) shall require that the property be operated as a therapeutic residence during the lease period;

"(iii) shall require that the residents of the therapeutic residence pay to the nonprofit corporation such reasonable rent as the Secretary shall prescribe;

"(iv) shall require the lessee to pay to the medical center benefiting from the operation of such therapeutic residence 60 percent of the rent received each month during the lease period from eligible veterans residing in a therapeutic residence on such property;

"(v) shall provide for return of the property to the Secretary upon termination of the lease; and

"(vi) shall include such other terms and conditions, consistent with this subsection, as the Secretary considers appropriate for protection of the interests of the United States.

"(8) The director of a medical center shall hold the sums received pursuant to paragraph (8)(C)(iii) of this subsection until such sums are transferred pursuant to this paragraph. The Secretary shall periodically transfer such sums to the appropriate loan guaranty fund. The Secretary, in consultation with the Secretary of the Treasury, shall prescribe regulations to carry out this paragraph.

"(9) In the case of a nonprofit corporation that, on September 30, 1990, is conducting a compensated work therapy program pursuant to a contract awarded by the Department of Veterans Affairs, the operations of such corporation not covered by a contract awarded under the pilot program shall not be affected by the provisions of this subsection.

"(10) In-kind services furnished to a nonprofit corporation by the Department of Veterans Affairs under the pilot program shall be considered as part of a pass-through account under the Department's resource allocation methodology and any other methodology used by the Department to allocate resources to its health-care facilities.

"(11)(A) Any nonprofit corporation established to operate a therapeutic residence or therapeutic residences under the pilot program shall be established in accordance with the nonprofit corporation laws of the State or States in which the therapeutic residence or residences are to be operated and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

"(B) A nonprofit corporation participating in the pilot program shall be established solely for the purpose of conducting one or more compensated work therapy programs and operating therapeutic residences in conjunction with such programs.

"(C) Except as otherwise provided in this paragraph or under regulations prescribed by the Secretary, a nonprofit corporation participating in the pilot program, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

"(D) The board of directors of each nonprofit corporation participating in the pilot program shall include employees of the Department, but the total number of such employees on the board must be less than one-half of the total number of directors. An employee of the Department of Veterans Affairs directly responsible for the conduct of compensated work therapy programs at the medical center benefiting from the operation of a therapeutic residence by the corporation shall be a member of the board.

"(E) A nonprofit corporation participating in the pilot program may—

"(i) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purpose specified in subparagraph (B) of this subsection;

"(ii) employ such employees as it considers necessary for such purpose and fix the compensation of such employees; and

"(iii) in the discretion of the corporation board of directors, transfer gifts and grants accepted under clause (i) of this subparagraph to the fund.

"(F) The records of a nonprofit corporation participating in the pilot program shall be available to the Secretary.

"(G) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a nonprofit corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

"(H) Such a nonprofit corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

"(I) Each such nonprofit corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

"(J) Each member of the board of directors of a nonprofit corporation participating in the pilot program, each employee of such a corporation, and each employee of the Department involved in the functions of the corporation during any year—

"(i) shall, with respect to such functions, be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

"(ii) shall, with respect to such functions, submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as is required of Federal employees.

"(K) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and locations of nonprofit corporations participating in the pilot program and the amount loaned and the value of in-kind services furnished by the Secretary to each such corporation under the pilot program.

"(c)(1) Under the pilot program, the Secretary, in connection with the conduct of compensated work therapy programs at not less than ten and not more than fifteen Department of Veterans Affairs medical centers, shall operate residences as therapeutic residences for the furnishing of transitional housing solely for veterans who are furnished compensated work therapy pursuant to section 618(b) of this title.

"(2) Notwithstanding any other provision of law, the Secretary may use such procurement procedures for the purchase, lease, or other acquisition of residential housing for purposes of this subsection as the Secretary considers appropriate to expedite the opening and operation of therapeutic residences and to protect the interests of the United States.

"(3) A therapeutic residence may be operated for veterans described in paragraph (1) of this subsection under the following conditions:

"(A) That only veterans described in such paragraph and a house manager reside in such residence.

"(B) That each resident, other than the house manager, pay the Department rent for the period or periods of residence in such residence.

"(C) That, in the establishment and operation of such therapeutic residence in a community, the Secretary consult with appropriate representatives of such community and comply with zoning requirements, building permit requirements, and similar requirements applicable to other real property used for similar purposes in such community.

"(D) That the residence meet the State and community fire and safety requirements applicable to other real property used for similar purposes in the community in which the therapeutic residence is located.

"(4)(A) The Secretary may provide for free room and subsistence for a house manager in addition to or instead of payment of a fee for the house manager's services.

"(B) The total amount of the compensation paid and otherwise provided for a house manager (taking into consideration the value of any free room and subsistence under subparagraph (A) of this paragraph) may not be less than the equivalent of the total amount that would be payable to the house manager for the house manager's services if the house manager were paid the hourly minimum wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)).

"(5) The Secretary may operate as a therapeutic residence under this subsection—

"(A) any suitable residential property (i) acquired by the Secretary as the result of a default on a loan made, guaranteed, or insured under chapter 37 of this title, or (ii) purchased for the pilot program; and

"(B) any other suitable residential property purchased, leased, or otherwise acquired by the Secretary.

"(6) In the case of the purchase of any property referred to in paragraph (5)(A) of this subsection, the Secretary shall transfer from unobligated amounts in the fund to the appropriate loan guaranty fund the amount equal to the amount that the Secretary would charge for the sale of such property to a nonprofit organization or a State pursuant to section 9 of Public Law 100–198 (101 Stat. 1320).

"(7) Subject to the authority, direction, and control of the Secretary, the Chief Medical Director shall be responsible for the management, maintenance, and disposition of property acquired for the purpose of this subsection.

"(8) The Secretary shall prescribe—

"(A) a procedure for establishing reasonable rental rates for persons residing in therapeutic residences; and

"(B) appropriate limits on the period for which such persons may reside in therapeutic residences.

"(9) The Secretary may dispose of any property acquired for the purpose of carrying out this subsection when such property is no longer used for such purpose. The proceeds of disposition of such property shall be credited to the fund.

"(d)(1) There is authorized to be appropriated to the fund for the purposes of carrying out this section, a total of $5,000,000 for fiscal years 1991 through 1995.

"(2) To the extent that less than $5,000,000 is appropriated pursuant to paragraph (1) of this subsection, the Secretary may transfer to the fund, from unobligated amounts in the General Post fund of the Department of Veterans Affairs medical center that will contract for the operation of or operate a therapeutic residence under this section, such amounts as the Secretary determines are necessary, in addition to any amounts so appropriated, to carry out this section.

"(e)(1) Not later than February 1, 1995, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program.

"(2) The report shall include—

"(A) the Secretary's assessment of the effects that transfers of housing to Veterans Health Services and Research Administration under the pilot program have on the Loan Guaranty Revolving Fund established under section 1824(a) of this title and the Home Loan Guaranty Fund established under section 1824A(a) of this title; and

"(B) such recommendations as the Secretary considers appropriate.

"(f) For the purposes of this section—

"(1) the term 'appropriate loan guaranty fund' means (i) in the case of a lease or purchase of a property that had secured a loan that was guaranteed, insured, or made under chapter 37 of this title and was closed or assumed after September 30, 1989, the Home Loan Guaranty Fund established by section 1824A(a) of this title, or (ii) in the case of any other property, the Loan Guaranty Revolving Fund established under section 1824(a) of this title;

"(2) the term 'eligible veteran' means a veteran eligible to receive therapeutic and rehabilitative services under this section;

"(3) the term 'existing compensated work therapy program' means a compensated work therapy program that is being conducted under section 618(b) of this title by a Department of Veterans Affairs medical center on the date of the enactment of the Veterans Benefits and Health Care Act of 1989;

"(4) the term 'fund' means the Special Therapeutic and Rehabilitation Activities Fund established by section 618(c)(1) of this title;

"(5) the term 'nonprofit corporation' means a corporation recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

"(6) the term 'therapeutic residence' means a residential facility in which eligible veterans may reside while participating in a compensated work therapy program conducted pursuant to section 618 of this title and includes real property associated with such facility.

"(g) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 618 the following new item:

"618A. Compensated work therapy and therapeutic residence pilot program.".

(d) NONPROFIT CORPORATIONS FOR VETERANS COMPENSATED WORK THERAPY PROGRAMS.—(1) Chapter 73 is amended by adding at the end the following new subchapter:

"SUBCHAPTER VII—NONPROFIT CORPORATIONS FOR VETERANS COMPENSATED WORK THERAPY PROGRAMS

"§ 4171. Authority to establish; status

"(a) The Secretary may authorize the establishment of one or more nonprofit corporations to provide a flexible funding mechanism for the conduct of Department compensated work therapy programs for veterans (including homeless veterans) in such community or communities as the Secretary may designate. Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

"(b) Any corporation established under this subchapter shall be established solely to facilitate the conduct of compensated work therapy programs for veterans.

"(c) If, by the end of the three-year period beginning on the date of the establishment of a corporation under this subchapter, the corporation is not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

"§ 4172. Funds received by corporations

"(a) Except for sums used as provided in subsection (b) of this section, funds received by a corporation established under this subchapter for the conduct of compensated work therapy programs shall be transferred to the Special Therapeutic and Rehabilitation Activities Fund established under section 618(c) of this title and shall be administered by the Secretary for conducting such programs.

"(b)(1) Subject to paragraph (2) of this subsection, the corporation may use funds referred to in subsection (a) of this section to defray the administrative and fund-raising expenses of the corporation.

"(2) Expenditures of the corporation shall be approved in advance in accordance with procedures prescribed by the Secretary.

"§ 4173. Board of directors; executive director

"(a) The Secretary shall provide for the appointment of a board of directors for each corporation established under this subchapter. The board shall include—

"(1) an officer or employee of the Department who—

"(A) is in a field office of the Department in or near the community or communities for which the corporation is established; and

"(B) is involved in the administration of section 618 of this title; and

"(2) representatives of the community or communities for which the corporation is established who are not officers or employees of the Federal Government.

"(b) Each such corporation shall have an executive director who shall be appointed by the board of directors with the concurrence of the Secretary. The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

"§ 4174. General powers

"A corporation established under this subchapter may—

"(1) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely for the purpose of facilitating the conduct of compensated work therapy programs;

"(2) employ personnel to carry out such purpose; and

"(3) fix the compensation of such personnel.

"§ 4175. Applicable State law

"Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State or States in which the community or communities for which the corporation is established are located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

"§ 4176. Accountability and oversight

"(a)(1)(A) The records of a corporation established under this subchapter shall be available to the Secretary.

"(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

"(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

"(b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

"(c) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the Department who is involved in the functions of the corporation during any year—

"(1) shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

"(2) shall submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as is required of Federal employees.

"(d) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and location of corporations established and the amount of the contributions made to each such corporation.

"§ 4177. Report to Congress

"Not later than February 1, 1993, the Secretary shall submit to Congress a report on the experience through the end of fiscal year 1992 under this subchapter. The report shall include such recommendations as the Secretary considers appropriate.

"§ 4178. Expiration of authority

"No corporation may be established under this subchapter after September 30, 1993.

"§ 4179. Definition

"For the purposes of this section, the term 'compensated work therapy program' means any program of therapeutic and rehabilitative activities conducted under section 618 of this title.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following:

"SUBCHAPTER VII—NONPROFIT CORPORATIONS FOR VETERANS COMPENSATED WORK THERAPY PROGRAMS

"4171. Authority to establish; status.
"4172. Funds received by corporations.
"4173. Board of directors; executive director.
"4174. General powers.
"4175. Applicable State law.
"4176. Accountability and oversight.
"4177. Report to Congress.
"4178. Expiration of authority.
"4179. Definition.".

(e) Availability of the Special Therapeutic and Rehabilitation Activities Fund for Certain Activities.—Section 618(c), as amended by subsection (b), is further amended—

(1) in paragraph (1), by inserting "and for the purpose of carrying out section 618A(c) of this title" before the period at the end of the first sentence; and

(2) in paragraph (2)—

(A) by inserting "and all funds received by the Department as rent under section 618A(c) of this title," in the first sentence after "paragraph (2) of such subsection,"; and

(B) by adding at the end the following: "The Secretary may also distribute out of unobligated amounts in the fund such amounts as may be necessary for the acquisition, management, maintenance, and disposition of real property for the purpose of carrying out section 618A of this title."

(f) Conforming Amendment.—Section 618(b) is amended by striking out "therapeutic work" both places it appears and inserting in lieu thereof "compensated work therapy".

SEC. 223. PILOT PROGRAM: NONINSTITUTIONAL ALTERNATIVES TO NURSING HOME CARE.

(a) AUTHORITY TO PROVIDE FOR NONINSTITUTIONAL CARE.—(1) Subchapter II of chapter 17, as amended by section 203(a), is further amended by adding at the end (after the section added by section 203(a)) the following new section:

"§ 620D. Noninstitutional alternatives to nursing home care; pilot program

"(a) During the four-year period beginning on October 1, 1990, the Secretary shall conduct a pilot program for the furnishing of medical, rehabilitative, and health-related services in noninstitutional settings for veterans who—

"(1) are eligible under this chapter for, and are in need of, nursing home care; and

"(2)(A) are in receipt of or in need of nursing home care primarily for the treatment of a service-connected disability; or

"(B) have a service-connected disability rated at 50 percent or more.

"(b)(1) Under the pilot program conducted pursuant to subsection (a), the Secretary shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) in the case of each veteran furnished services under the pilot program, appoint a Department of Veterans Affairs health-care employee to furnish case management services.

"(2) For the purposes of paragraph (1) of this subsection, 'case management' includes the coordination and facilitation of all services furnished to a veteran by the Department of Veterans Affairs, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Department, either directly or through a contract, or by an entity other than the Department) monitoring, reassessment, and followup.

"(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the sharing of other Department resources) to a facility furnishing services to veterans under subsection (b)(1)(A) of this section. Any such in-kind assistance shall be provided under a contract between the Department and the facility concerned. The Secretary may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

"(d) The total cost of providing services or in-kind assistance in the case of any veteran in any fiscal year under the pilot program may not exceed 65 percent of the cost that would have been incurred by the Department during such fiscal year if the veteran had been furnished, instead, nursing home care under section 610 of this title in that fiscal year.

"(e) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.".

(2) The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 620C the following new item:

"620D. Noninstitutional alternatives to nursing home care; pilot program.".

(b) REPORT.—Not later than February 1, 1994, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report setting forth the Secretary's evaluation, findings, and conclusions regarding the conduct, through September 30, 1993, of the pilot program required by section 620C of title 38, United States Code (as added by subsection (a)), and the results of the furnishing of care under such pilot program for the participating veterans. The report shall include a description of the conduct of the pilot program (including a description of the veterans furnished services and of the services furnished under the pilot program), and any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate to include in the report.

SEC. 224. PREVENTIVE MEDICINE.

(a) EXTENSION OF PILOT PROGRAM.—Paragraph (1) of section 663(a) is amended to read as follows:

"(1) In order to carry out the purpose of this subchapter, the Secretary, through fiscal year 1995—

"(A) shall furnish annually at least two preventive health-care services that the Secretary determines to be feasible and appropriate to any veteran being furnished care or services under section 610(a)(1) or 612(a) (1) or (2) of this title; and

"(B) shall implement annually at each Department of Veterans Affairs health-care facility a major preventive health-care and health-promotion initiative for such veterans.".

(b) LIMIT ON EXPENDITURES.—Section 663(c) is amended—

(1) by striking out "or" after "1983,"; and

(2) by striking out the period at the end and inserting in lieu thereof ", more than $16,000,000 in fiscal year 1991, more than $17,000,000 in fiscal year 1992, more than $18,000,000 in fiscal year 1993, more than $19,000,000 in fiscal year 1994, or more than $20,000,000 in fiscal year 1995.".

(c) DIRECTOR OF PREVENTIVE HEALTH-CARE AND HEALTH-PROMOTION PROGRAMS.—Section 663 is amended by adding at the end the following new subsection:

"(d)(1) The Chief Medical Director shall designate an official in the Veterans Health Services and Research Administration to act as the Director of Preventive Health-Care and Health-Promotion Programs.

"(2) The Director of Preventive Health-Care and Health-Promotion Programs shall prepare guidance regarding and be responsible for coordinating and evaluating, and advising the Chief Medical Director on, all activities carried out under this subchapter.".

(d) REPORTS.—Section 664 is amended to read as follows:

"(a) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

"(1) not later than February 1, 1993, an interim report on the experience under the program provided for by this subchapter; and

"(2) not later than February 1, 1995, a final report on the experience under the program.

"(b) Each report submitted pursuant to subsection (a) of this section shall include, with respect to the experience under the program through September 30 of the year preceding the deadline for submission of such report specified in subsection (a) of this section—

"(1) a description of the types of services that have been furnished pursuant to section 663(a)(1)(A) and the number of veterans who received such services;

"(2) a description of the preventive health-care and health-promotion initiatives that were implemented pursuant to section 663(a)(1)(B) of this title and the number of veterans who have been served through such initiatives;

"(3) a description of the types of preventive health-care services that have been furnished pursuant to sections 610, 612, and 601(6) of this title and the number of veterans who received such services;

"(4) a description of activities conducted pursuant to section 663(a)(2) of this title;

"(5) an assessment of the results of the program; and

"(6) any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.".

(e) CONFORMING AND CLARIFYING AMENDMENTS.—(1) Section 661(1) is amended by striking out ", including veterans with service-connected disabilities rated at 50 per centum or more and veterans being furnished care or services involving a service-connected disability under this chapter,".

(2) Clauses (1) and (2) of section 662 are amended to read as follows:

"(1) periodic medical and dental examinations (including screenings for high blood pressure, glaucoma, colorectal cancer, and cholesterol);

"(2) patient health education (including education about nutrition, stress management, physical fitness, and smoking cessation);".

SEC. 225. PILOT PROGRAM FOR FURNISHING ASSISTIVE ANIMALS TO CERTAIN VETERANS.

(a) REQUIREMENT FOR PILOT PROGRAM.—During fiscal years 1991, 1992, 1993, and 1994, the Secretary of Veterans Affairs shall conduct a pilot program under which the Secretary—

(1) shall—

(A) furnish assistive monkeys to quadriplegic veterans who have service-connected disabilities rated 50 percent or more; and

(B) facilitate the furnishing of assistive monkeys to other quadriplegic veterans; and

(2) may—

(A) furnish service dogs to quadriplegic veterans who have service-connected disabilities rated 50 percent or more; and

(B) facilitate the furnishing of service dogs to other quadriplegic veterans.

(b) SELECTION OF VETERAN-PARTICIPANTS.—(1) In determining whether to furnish an assistive animal to a veteran, or to facilitate the furnishing of an assistive animal to a veteran, under the pilot program, the Secretary shall (A) consider the extent to which the veteran needs and can benefit from the assistance of the animal, and (B) provide a preference for veterans who have service-connected quadriplegia.

(2) The Secretary shall approve a veteran for participation in the pilot program only upon the Secretary's determination that the veteran is well-suited for—

(A) carrying out the responsibilities involved in the care of the animal; and

(B) effectively using the animal for assistance in performing the veteran's daily living tasks.

(c) ADMINISTRATIVE MATTERS.—(1) The Secretary is authorized to enter into contracts for the furnishing of assistive monkeys under subsection (a)(1). Under such contracts the Secretary may make advance payments for the furnishing of the monkeys before receipt of the monkeys and may either reimburse the provider of such monkeys for the costs of training the monkeys or, subject to such terms and conditions as the Secretary determines necessary to protect the interests of the Government, make advance payments for such costs before the costs are incurred.

(2) Ownership of an assistive animal furnished to a veteran under the pilot program shall be determined in accordance with a contract between the provider of the animal and the veteran.

(3) The Secretary shall provide for the protection of the welfare of assistive animals furnished veterans under the pilot program.

(d) EVALUATION AND REPORT.—(1) The Secretary shall evaluate the conduct of the pilot program, the nature and extent of the benefit to veterans furnished assistive monkeys or service dogs under the program (including any benefits related to employment), the costs and cost-effectiveness of furnishing such monkeys or dogs to quadriplegic veterans, and the effects of such program on the recruitment and retention of paid primary caregivers for veterans receiving monkeys or dogs and on the morale of unpaid primary caregivers for such veterans.

(2) Not later than February 1, 1994, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program. The report shall contain—

(A) the results of the evaluation carried out under paragraph (1), including descriptions of the procedures and criteria used to select veterans to receive assistive monkeys or service dogs, the nature and extent of the benefit that the veterans received from the assistance of such monkeys or dogs, and the amounts and types of costs incurred by the Department of Veterans Affairs in the conduct of the program;

(B) the Secretary's views on the relationship between the furnishing of an assistive monkey or service dog to a veteran and the payment to a veteran of (i) an aid and attendance allowance under section 314(r) of title 38, United States Code, or (ii) an annual rate of pension under section 521 of such title based on the veteran's need of regular aid and attendance; and

(C) any recommendations that the Secretary considers appropriate regarding whether the pilot program should be continued or whether the authority to furnish assistive monkeys or service dogs, or both, to quadriplegic veterans should be made permanent.

(e) EVALUATION OF PRIVATE ASSISTIVE MONKEY PLACEMENT PROGRAMS.—Before furnishing assistive monkeys to veterans under the pilot program, the Chief Medical Director of the Department of Veterans Affairs shall provide for the conduct of an independent evaluation of the way that assistive monkeys would be treated during training and placement under the pilot program. The Chief Medical Director shall ensure that the person or organization performing the evaluation consults with representatives of appropriate animal welfare organizations prior to conducting the evaluation.

(f) DEFINITIONS.—For the purposes of this section—

(1) the terms "veteran" and "service-connected" have the meanings given those terms in paragraphs (2) and (16), respectively, of section 101 of title 38, United States Code;

(2) the terms "assistive monkey" and "service dog" mean a monkey or dog, respectively, that is specially trained to assist in the performance of daily living tasks for quadriplegic individuals; and

(3) the term "assistive animal" means an assistive monkey or a service dog.

SEC. 226. SIGNAL DOGS FOR CERTAIN DISABLED VETERANS.

(a) Authority To Provide Signal Dogs.—Section 614 is amended by adding at the end the following new subsection:

"(c)(1) The Secretary may provide signal dogs to veterans who have service-connected hearing impairments and are in need of the assistance of such dogs and may pay travel and incidental expenses, under the terms and conditions set forth in section 111 of this title, for travel to and from their homes that are incurred in becoming adjusted to such signal dogs.

"(2) For the purposes of this subsection, the term 'signal dog' means a dog specially trained to provide hearing assistance to deaf persons.".

(b) Technical Corrections.—Section 614(b) is amended by striking out "(under the terms and conditions set forth in section 111 of this title) to and from their homes and" and inserting in lieu thereof ", under the terms and conditions set forth in section 111 of this title, for travel to and from their homes that are".

SEC. 227. PROSTHETIC SERVICES REPORT.

Not later than January 15, 1992, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(1) the Secretary's evaluation of the reasons for the backlog that occurred in the procurement of prosthetic appliances in fiscal year 1989, and for the failure to furnish prosthetic appliances in accordance with the priority established in section 612(i) of title 38, United States Code; and

(2) a description of the actions that the Secretary has taken and plans to take to prevent a recurrence of—

(A) the failure to furnish prosthetic appliances in accordance with such priority, including a schedule for any such planned actions; and

(B) the accumulation of a significant backlog in the procurement of prosthetic appliances.

SEC. 228. REQUIREMENT FOR SECOND OPINION FOR FEE-BASIS OUTPATIENT DENTAL CARE REIMBURSEMENT.

Section 612(b)(3) is amended by striking out "$500" and inserting in lieu thereof "$1,000".

SEC. 229. REPEAL OF AUTHORITY TO FURNISH TOBACCO TO VETERANS RECEIVING HOSPITAL OR DOMICILIARY CARE.

(a) In General.—Section 615 is repealed.

(b) Clerical Amendment.—The table of sections at the beginning of chapter 17 is amended by striking out the item relating to section 615.

SEC. 230. SHARING OF SPECIALIZED MEDICAL RESOURCES.

(a) Expansion of Purpose.—Section 5051 is amended by striking out "hospitals" both places it appears in the first sentence and inserting in lieu thereof "health-care facilities".

(b) Expansion of Authority.—Section 5053 is amended—

(1) in subsection (a)—

(A) by striking out "hospitals" the first place it appears and all that follows through "community" and inserting in lieu thereof "health-care facilities and other health-care facilities (including organ banks, blood banks, or similar institutions), research centers, or medical schools"; and

(B) by striking out the last sentence; and

(2) in subsection (b)—

(A) in the first sentence, by striking out "charge" and all that follows and inserting in lieu thereof "methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved."; and

(B) in the second sentence, by inserting before the period at the end "and to funds that have been allotted to the facility that furnished the resource involved".

SEC. 231. DEVELOPMENT OF RECOMMENDED LEGISLATION FOR THE ELIMINATION OF INCONSISTENCIES IN CERTAIN VETERANS BENEFITS LAWS.

(a) Requirement To Establish Task Force.—The Secretary of Veterans Affairs shall establish a task force to recommend policies and legislation for the elimination of inconsistencies among provisions of law relating to veterans' eligibility for certain health-care benefits.

(b) COMPOSITION OF TASK FORCE.—The task force shall be composed of the following:

(1) Employees of the Department of Veterans Affairs involved in the administration of programs affected by the inconsistencies in law referred to in subsection (a).

(2) Representatives of organizations concerned with the administration of such programs, as determined by the Secretary.

(c) RESPONSIBILITIES OF TASK FORCE.—The task force shall—

(1) identify inconsistencies among sections 601(6), 612, 614, 617, and 619 of title 38, United States Code, and the implementation of such sections;

(2) after consultation with appropriate representatives of veterans, develop policy recommendations and legislative proposals for the elimination of any such inconsistencies; and

(3) not later than the date specified by the Secretary, submit to the Secretary a report containing (A) descriptions of the inconsistencies identified by the task force, (B) the policies and legislative proposals recommended by the task force for the elimination of such inconsistencies, and (C) the reasons for each such recommendation.

(d) ACTION BY THE SECRETARY.—The Secretary shall—

(1) review the report submitted by the task force; and

(2) either (A) approve the recommendations for legislation contained in the report, or (B) with respect to any such recommendations that the Secretary does not approve, recommend, or decline to recommend alternative legislative proposals that the Secretary considers appropriate for the elimination of the inconsistencies identified by the task force.

(e) SUBMISSION OF RECOMMENDATIONS TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives—

(1) the report submitted to the Secretary by the task force; and

(2) a report containing—

(A) any legislation recommended by the Secretary for the elimination of the inconsistencies identified by the task force;

(B) an analysis of any legislation recommended by the Secretary; and

(C) the reasons for any differences between any legislation recommended by the Secretary and the legislation recommended by the task force.

PART C—HEALTH-CARE PERSONNEL

SEC. 241. SHORT TITLE.

This part may be cited as the "Veterans Health-Care Personnel Act of 1990".

SEC. 242. HEALTH PROFESSIONALS EDUCATIONAL ASSISTANCE PROGRAMS.

(a) STIPEND FOR RESERVE GI BILL PARTICIPANTS PURSUING HEALTH-PROFESSION EDUCATION.—(1) Chapter 76 is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—RESERVE MEMBER STIPEND PROGRAM

"§ 4351. Authority for program

"As part of the Educational Assistance Program, the Secretary of Veterans Affairs may provide assistance in the form of reserve member stipends under this subchapter.

"§ 4352. Eligibility: individuals entitled to benefits under the Reserve GI Bill program

"(a) To be eligible to receive a reserve member stipend under this subchapter, an individual must—

"(1) be accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in a course of education or training that is approved by the Secretary and that leads to completion of a degree in a health profession involving direct patient care or care incident to direct patient care;

"(2) be receiving benefits under chapter 106 of title 10; and

"(3) have scored above the 50th percentile on the Armed Forces Qualification Test.

"(b) For purposes of subsection (a)(1) of this section, a qualifying educational institution is an accredited institution, as determined by the Secretary, located within a State.

"§ 4353. Amount of reserve member stipend

"The Secretary shall pay to an individual selected to receive a reserve member stipend under this subchapter the amount of $400 (adjusted in accordance with section 4331 of this title) for each month the individual is pursuing satisfactorily a program of education or training specified in the agreement entered into under section 4304 of this title. Payment of benefits under this section to an individual for any period shall be in addition to benefits paid to the individual for the same period under chapter 106 of title 10.

"§ 4354. Obligated service

"An individual receiving a reserve member stipend under this subchapter shall provide service in the full-time clinical practice of the individual's profession as a full-time employee of the Department for the period of obligated service specified in the agreement entered into under section 4304 of this title.

"§ 4355. Breach of agreement; liability

"(a)(1) Subject to paragraph (2), an individual who is receiving or has received a reserve member stipend under this subchapter and who fails to perform the service for which the individual is obligated under section 4354 of this title shall be liable to the United States in an amount determined in accordance with section 4317(c)(1) of this title.

"(2) An individual who, as a result of performing active duty (including active duty for training), is unable to perform the service for which the individual is obligated under section 4354 of this title shall be permitted to perform that service upon completion of the active duty service (or active duty for training). The Secretary may, by regulation, waive the requirement for the performance of the service for which the individual is obligated under section 4354 of this title in any case in which the Secretary determines that the individual is unable to perform the service for reasons beyond the control of the individual or in any case in which the waiver would be in the best interest of the individual and the United States.

"(b) Any amount owed the United States under subsection (a) of this section shall be paid to the United States during the one-year period beginning on the date of the breach of the agreement.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"SUBCHAPTER V—RESERVE MEMBER STIPEND PROGRAM

"4351. Authority for program.
"4352. Eligibility: individuals entitled to benefits under the Reserve GI Bill program.
"4353. Amount of reserve member stipend.
"4354. Obligated service.
"4355. Breach of agreement; liability.".

(b) Periodic Adjustments in Amount of Reserve Member Stipend.—Section 4331 is amended—

(1) in the first sentence of subsection (a)(1), by striking out "amount and the maximum tuition reimbursement amount" and inserting in lieu thereof "amount, the maximum tuition reimbursement amount, and the maximum reserve member stipend amount"; and

(2) in subsection (b)—

(A) by redesignating paragraph (3) as paragraph (4); and

(B) by inserting after paragraph (2) the following new paragraph (3):

"(3) The term 'maximum reserve member stipend amount' means the maximum amount of a reserve member stipend that may be paid under subchapter V of this chapter, as provided in section 4353 of this title and as previously adjusted (if at all) in accordance with this subsection.".

(c) Conforming Amendments.—(1) Section 4301(a) is amended—

(A) by striking out "and" at the end of clause (1);

(B) by striking out the period at the end of clause (2) and inserting in lieu thereof ", and"; and

(C) by adding at the end the following:

"(3) the reserve member stipend program provided for under subchapter V of this chapter.".

(2) Subsections (a) and (b) of section 4302 of such title are each amended by inserting "under subchapter I or II of this chapter" after "Educational Assistance Program".

(3) Paragraphs (1)(A), (2)(D), and (5) of section 4304 of such title are each amended by striking out "subchapter II or III" and inserting in lieu thereof "subchapters II, III, or V".

(c) EFFECTIVE DATE.—No reserve member stipend may be paid under subchapter V of chapter 76 of title 38, United States Code, as added by subsection (a), for any period before October 1, 1990.

SEC. 243. PAY RATES FOR NURSES AND OTHER HEALTH-CARE PROFESSIONALS IN CERTAIN POSITIONS.

(a) IN GENERAL.—(1) Chapter 73 is amended by inserting after section 4107 the following new section:

"§ 4107A. Competitive pay rates for certain nurse and other health-care professional positions

"(a)(1) It is the purpose of this section to ensure, by a means providing maximum flexibility to directors of Department of Veterans Affairs health-care facilities, that the rates of basic pay for health-care professional positions described in paragraph (2) of this subsection in each such facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for such health-care facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the recruitment and retention of qualified personnel for such positions.

"(2) The health-care professional positions referred to in paragraph (1) of this subsection are registered nurse positions, registered nurse anesthetist positions, certified registered nurse anesthetist positions, and the positions for such other health-care professionals referred to in clauses (1) and (3) of section 4104 of this title as the Secretary may determine upon the recommendation of the Chief Medical Director.

"(b) The Secretary shall ensure that, for pay periods beginning on or after July 1, 1991, the rates of basic pay for covered positions in the Department are established in accordance with this section instead of section 4107(b)(1) of this title.

"(c)(1) Not later than June 1, 1991, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

"(A) conduct a survey in accordance with this subsection; and

"(B) on the basis of such survey, establish the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out the purpose of this section.

"(2) The rates of basic pay established pursuant to paragraph (1) of this subsection shall become effective beginning with the first pay period that begins on or after July 1, 1991.

"(3) Not later than December 1 of each year after 1990, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

"(A) conduct a survey in accordance with this subsection; and

"(B) on the basis of such survey—

"(i) determine whether it is necessary to adjust the rates of basic pay for such covered positions at such facility in order to carry out the purpose of this section; and

"(ii) effective with the first pay period that begins on or after January 1 of the next year, adjust the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out such purpose.

"(4)(A) In the case of the covered positions in each category of covered positions in a Department health-care facility, the director of that facility shall survey the entry-level compensation established for the corresponding health-care professional positions in comparable non-Department health-care facilities within the same labor market area as that Department health-care facility. The Secretary shall specify in regulations the criteria for determining the number of comparable non-Department health-care facilities to be included in the survey.

"(B) If the number of non-Department health-care facilities comparable to a Department health-care facility in the same labor market area is less than the number determined in accordance with the criteria specified pursuant to subparagraph (A) of this paragraph or is less than the director of that Department health-care facility considers necessary in order to produce a valid comparison, such director shall, in the case of the covered positions referred to in such subparagraph, survey—

"(i) the entry-level compensation established for the corresponding health-care professional positions in such comparable non-Department health-care facilities as are located within that labor market area; and

"(ii) the entry-level compensation established for the corresponding health-care professional positions in other non-Department health-care facilities within that labor market area.

"(C) For the purposes of this paragraph, a non-Department health-care facility is comparable to a Department health-care facility if the director of the Department health-care facility determines, in accordance with regulations prescribed by the Secretary, that the non-Department health care facility (i) is in direct competition with the Department health-care facility for the recruitment and retention of personnel qualified for employment in covered positions, and (ii) has other characteristics that are comparable to the characteristics of a Department health-care facility.

"(5)(A) Except as provided in subparagraph (B) of this paragraph, the director of a Department health-care facility shall ensure that an appropriate cost-of-living adjustment is provided for in adjustments of rates of pay that are made for years following 1991 pursuant to a survey under this subsection.

"(B) The director of a Department health-care facility may waive, in whole or in part, with respect to any rate of basic pay for a covered position the cost-of-living component of any adjustment for any year in which the cost-of-living adjustment is not necessary, in whole or in part (as the case may be), in order for that rate of pay to be competitive.

"(d)(1) If the director of a Department health-care facility determines in any year that, because of an insufficiency in the number of non-Department health-care facilities or non-Department covered positions, a survey under subsection (c) of this section would not provide a valid comparison with respect to the covered positions in the director's facility, the director shall establish or adjust the rates of basic pay for the covered positions in the director's facility as provided in this subsection instead of subsection (c) of this section.

"(2) Not later than 90 days before the date on which the director of a Department health-care facility establishes or adjusts rates of basic pay pursuant to paragraph (1) of this subsection, the director shall—

"(A) identify a labor market area that is similar to the labor market area of such facility and includes a Department health-care facility; and

"(B) notify the Chief Medical Director of the labor market identified pursuant to clause (A) of this paragraph.

"(3) The director of a health-care facility referred to in paragraph (1) of this subsection shall prescribe the same rates of basic pay for the covered positions in the director's facility as are prescribed for the same covered positions in the Department health-care facility located in the identified labor market area unless the selection of that labor market area for the purpose of this subsection is disapproved by the Chief Medical Director in accordance with paragraph (5) of this subsection.

"(4) If the Chief Medical Director disapproves (in accordance with paragraph (5) of this subsection) the selection of a labor market area by the director of a health-care facility for the purpose of this subsection, the director of that facility shall prescribe the same rates of basic pay for the covered positions in that facility as are prescribed for the Department health-care facility in a labor market area which the Chief Medical Director shall designate. The Chief Medical Director may designate any labor market area that the Chief Medical Director determines to be similar to the labor market area of the director's health-care facility.

"(5) Not later than 60 days after receiving a notification from the director of a Department health-care facility under paragraph (2)(B) of this subsection, the Chief Medical Director shall—

"(A) approve the selection of the labor market area identified in the notification; or

"(B) disapprove the selection of that labor market area, designate another labor market area determined by the Chief Medical Director to be similar to the labor market area of the director's health-care facility, and notify that facility director of that designation.

"(6) In order for a labor market area to be determined similar to the labor market area of a Department health-care facility for the purposes of this subsection, both labor market areas must be similar in size, demographic characteristics, and labor market characteristics.

"(e)(1) When the director of a Department health-care facility establishes or adjusts the rates of basic pay for a grade for any category of positions at such facility in order to carry out the purpose of this section, the director shall specify the minimum rate of basic pay for such grade and, subject to paragraph (3) of this subsection, increase or reduce the other rates of basic pay for such grade to amounts that bear the same relationship to the specified minimum rate of basic pay and to each other as the rates of basic pay within such grade bear to each other before the increase or reduction, as the case may be.

"(2) The minimum rate of basic pay prescribed for a grade for the positions in any category of covered positions in a Department health-care facility on the basis of a survey conducted under subsection (c) of this section shall be sufficient for the pay and other employee benefits of the health-care professionals employed in such positions in such grade to be competitive with the entry-level compensation (but may not exceed the highest rate of entry-level pay established) for the corresponding health-care professional positions in non-Department health-care facilities in the same labor market area, as ascertained by the director of such facility in such survey.

"(3)(A) Except as provided in subparagraph (C) of this paragraph, the maximum rate of basic pay for any grade designated by the Secretary, upon the recommendation of the Chief Medical Director, as the entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for grade 13 of the General Schedule under section 5332 of title 5.

"(B) The maximum rate of basic pay for any grade other than an entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for a position in level V of the Executive Schedule under section 5316 of title 5.

"(C) The limitation prescribed by subparagraph (A) of this paragraph shall not apply to the entry-level grade for any category of covered positions if the positions have been designated by the Chief Medical Director as supervisory or managerial positions. The maximum rate prescribed by subparagraph (B) of this paragraph shall apply to such entry-level grade.

"(4) Whenever a grade is added to the schedule of grades for covered positions in any category of covered positions or a step within grade is added to a grade in such schedule, the director of a Department health-care facility shall establish the rates of basic pay for that grade or the rate of pay for that step, as the case may be, in the same manner as the rates of pay are established and adjusted under the other provisions of this subsection. The rates of basic pay for the additional grade shall bear the same relationship to the minimum rate of basic pay specified for such grade and to each other as the rates of basic pay within each other grade in such schedule bear to each other. The rate of pay for an additional step within grade shall bear the same relationship to the other rates of basic pay within such grade as such other rates bear to each other.

"(f) An employee who is paid a rate of basic pay established under this section and who is transferred (voluntarily or otherwise) from a covered position in one Department health-care facility to a covered position in another Department health-care facility shall be paid the rate of basic pay in effect for the covered position at the health-care facility to which the employee is transferred for the same grade and the same step within that grade as was applicable to that employee immediately before the transfer, if the Chief Medical Director determines that the duties of the position to which the employee is transferred are at least comparable to the duties of the position from which the employee was transferred.

"(g)(1) Rates of basic pay may be increased or reduced under this section.

"(2) A reduced rate of basic pay established for a covered position under this subsection shall not apply to an employee serving in such position at a Department health-care facility on the day before the effective date of the reduced rate. That employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to that employee on such day for as long as the employee continues to serve in such position at such facility.

"(h)(1) In developing the criteria for the conduct of surveys under subsection (c) for application by all Department health-care facilities, the Secretary shall consult with representatives of each labor organization accorded exclusive recognition under chapter 71 of title 5 for a unit that includes employees whose rates of pay are to be established on the basis of such surveys.

"(2) In the case of employees in covered positions in a unit in a particular Department health-care facility with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, the director of the health-care facility shall consult with the representatives of such labor organization on—

"(A) the criteria developed by the director of that health-care facility for the conduct of surveys under subsection (c);

"(B) the director's plans for the collection of data in conducting surveys; and

"(C) the determinations regarding specific rates of basic pay.

"(i) The establishment and adjustment of rates of basic pay under this section for covered positions does not limit the authority of the Secretary to pay bonuses under section 4120 of this title to employees appointed to such positions.

"(j)(1) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the exercise of the authority provided in this section for the immediately preceding calendar year.

"(2) The report shall contain an assessment of the effects of the exercise of such authority on the ability of the Department to recruit and retain qualified health-care professionals for covered positions. The Secretary shall include in the report recommendations for such additional legislation to facilitate the recruitment and retention of qualified health-care professionals for such positions as the Secretary considers necessary or appropriate.

"(3) If the authority provided in this section was exercised for the year covered by the report only to adjust the rates of basic pay for nurse positions, the report shall also contain the reasons that rates of basic pay were not adjusted for other health-care professional positions under such authority for such year and any plans for adjusting the rates of basic pay for other health-care professional positions under such authority.

"(k)(1) The Secretary, upon the recommendation of the Chief Medical Director, shall prescribe regulations setting forth criteria and procedures to carry out this section. Such regulations shall provide maximum flexibility for the director of each Department health-care facility. Documentation requirements in such regulations shall be minimal.

"(2) If the Secretary fails to prescribe final regulations under this subsection before April 1, 1991, the Secretary shall, not later than such date, prescribe interim final regulations for the purposes of this subsection. Such regulations shall be effective upon issuance and shall remain in effect until the effective date of final regulations issued for the purposes of this subsection.

"(3) If neither final regulations nor interim final regulations are prescribed under this subsection before April 1, 1991, the director of each Department health-care facility shall, nevertheless, make determinations and establish and adjust rates of basic pay under this section with respect to covered positions in such facility for 1991 and subsequent years. In the case of any determination or other action which is subject to criteria or procedures to be prescribed in such regulations, the director of each such facility shall apply such criteria and follow such procedures as the director considers appropriate and consistent with this section. Each such director shall apply the final regulations when issued.

"(l) Information collected in surveys conducted under this section are not subject to disclosure under section 552 of title 5.

"(m) For the purposes of this subsection—

"(1) the term 'covered position' means a position referred to in subsection (a)(1) of this section;

"(2) the term 'health-care facility' means a hospital or an independent outpatient clinic;

"(3) the term 'entry-level compensation', with respect to corresponding health-care professional positions in non-Department health-care facilities, means—

"(A) the minimum rate of pay established for professionals in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care professionals employed in the same category of Department covered positions; and

"(B) the other pecuniary employment benefits, if any, provided for the non-Department health-care professionals paid such minimum rate of pay; and

"(4) the term 'corresponding', with respect to health-care professional positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care professional positions in Department health-care facilities.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4107 the following new item:

"4107A. Competitive pay rates for certain nurse and other health-care professional positions.".

(b) **Relationship of Pay Rates to Additional Pay.**—Section 4107(e)(1) is amended by striking out "in subsection (b)(1) of this section".

(c) **Grades for Nurse Pay Schedule.**—(1) Section 4107(b)(1) is amended by striking out the items under the heading "NURSE SCHEDULE" and inserting in lieu thereof the following:

"Three or more grades, as prescribed by the Chief Medical Director pursuant to paragraph (3) of this subsection.".

(2) Section 4107(b) is amended by adding at the end the following new paragraph:

"(3) The Chief Medical Director shall prescribe the number of grades and the number of steps within grades for nurse positions.".

(d) Interim Competitive Pay Rates.—(1) The director of each Department of Veterans Affairs health-care facility located in a rural area—

(A) shall, not later than December 1, 1990, conduct a survey consistent with the provisions of section 4107A(c) of title 38, United States Code (as added by subsection (a)); and

(B) pursuant to the authority provided in section 4107(g) of such title (as amended by section 255)—

(i) shall decide, not later than January 1, 1991, on the basis of the survey referred to in clause (A), whether to adjust, on a local basis, the rates of basic pay for nurses employed by the Department of Veterans Affairs; and

(ii) if deciding to adjust such rates on a local basis, shall adjust such rates effective for pay periods beginning after January 1, 1991, and before July 1, 1991.

(2) In conducting the survey referred to in paragraph (1), the director of a health-care facility located in a rural area shall include in such survey the rates of pay paid to nurses who reside in such area, who are employed in a health-care facility located outside such area, and who commute to work from such area to such health-care facility, if the director determines that the number of nurses who commute to work outside the area adversely affects the ability to employ nurses in the health-care facility of the director.

(3) For the purposes of this subsection—

(A) the term "health-care facility" has the meaning given such term in section 4107A(l) of title 38, United States Code (as added by subsection (a)); and

(B) the term "rural area" means a geographic area that the Secretary determines, upon the recommendation of the Chief Medical Director, to be a rural area.

(e) First Report.—The first report under section 4107A(j) of title 38, United States Code (as added by subsection (a)), shall be submitted not later than March 1, 1992.

SEC. 244. OVERTIME RATES OF PAY FOR CERTAIN NURSES.

(a) In General.—Section 4107(e)(5) is amended by striking out the first sentence and inserting in lieu thereof the following: "A nurse who performs officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional service. The rate of overtime pay for such nurse shall be one and one-half times such nurse's hourly rate of basic pay.".

(b) Effective Date.—The amendment made by subsection (a) shall take effect with respect to overtime service performed on or after October 1, 1990.

SEC. 245. ADDITIONAL PAY FOR HEAD NURSES.

(a) In General.—Section 4107(e) is amended by adding at the end the following new paragraph:

"(11) A nurse shall be paid additional pay equal to 6 percent of the nurse's hourly rate of basic pay for each hour of service performed as a head nurse. The preceding sentence shall not apply to a nurse who is assigned to perform service as a head nurse for a period of less than 30 consecutive days.".

(b) Relationship to Basic Pay.—Paragraph (1) of section 4107(e) is amended by inserting "and paragraph (11)" after "(8)".

(c) Computation of Hourly Rate of Pay.—Paragraph (6) of section 4107(e) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (11)".

(d) Relationship to Other Additional Pay.—Paragraph (7) of section 4107(e) is amended by striking out "or (5)" and inserting in lieu thereof "(5), or (11)".

(e) Additional Pay as Head Nurse To Be Counted for Certain Benefits.—Paragraph (9) of section 4107(e) is amended by inserting ", other than pay under paragraph (11) of this subsection," after "this subsection".

(f) Technical Amendment.—Paragraph (9) of section 4107(e) is further amended by inserting "84," after "83,".

(g) Effective Date.—The amendments made by subsections (a) through (d) shall take effect with respect to service performed as a head nurse on or after October 1, 1990.

SEC. 246. PAY ENHANCEMENTS FOR CERTAIN HEALTH-CARE PERSONNEL.

Section 4107(f) is amended by striking out "or occupational therapists," and inserting in lieu thereof "occupational therapists, or any other health-care personnel furnishing direct care to patients or providing services incident to the furnishing of direct care to patients,".

SEC. 247. SPECIAL RATES CAP.

Section 4107(g)(3) is amended—

(1) by inserting "(A)" after "(3)";

(2) by inserting "by two times" after "exceed" the first place it appears; and

(3) by inserting at the end the following new subparagraph:

"(B) Whenever the amount of an increase under paragraph (1) of this subsection results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under subparagraph (A) of this paragraph, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.".

SEC. 248. AWARDS FOR RECERTIFICATION.

Section 4107 is amended by adding at the end the following new subsection:

"(k)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall pay each nurse who is recertified in the speciality in which the nurse is employed a lump-sum payment equal to 1 percent of the annual salary of the nurse (as of the time the nurse is recertified). The Secretary shall make such payment when the nurse is recertified.

"(2) A payment may not be paid to a recertified nurse under this subsection if the performance rating for such nurse for the latest rating period ending before the date of the recertification is less than satisfactory.

"(3) A special payment under this subsection shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this title.".

SEC. 249. COVERAGE OF VETERANS HEALTH SERVICES AND RESEARCH ADMINISTRATION PERSONNEL BY FEDERAL EMPLOYEES' COLLECTIVE BARGAINING PROCEDURES.

Section 4108 is amended—

(1) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

(2) by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department of Veterans Affairs";

(3) by striking out "Department of Medicine and Surgery" each place it appears and inserting in lieu thereof "Veterans Health Services and Research Administration";

(4) in subsection (a), by inserting "except as provided in subsection (f) of this section," after "Notwithstanding any law, Executive order, or regulation,";

(5) in subsection (c)(2), by striking out "non-Veterans' Administration" and inserting in lieu thereof "non-Department of Veterans Affairs";

(6) in subsection (d), by inserting "except as provided in subsection (f) of this section," after "Notwithstanding any other provision of law,"; and

(7) by adding at the end the following new subsection:

"(f) The provisions of chapter 71 of title 5 shall apply to the exercise of the Secretary's authority under this section except with respect to—

"(1) the prohibitions set out in paragraphs (1) through (6) of subsection (a) of this section; and

"(2) the matters covered by section 4110 of this title.".

SEC. 250. DISCIPLINARY ACTIONS AND GRIEVANCES.

Section 4110 is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a)(1) The Chief Medical Director, under regulations prescribed by the Secretary, shall from time to time appoint disciplinary boards to determine, upon notice and fair hearing, the charges in any disciplinary action brought against a person employed in a position listed in paragraph (1) of section 4104 of this title (hereafter in this section referred to as the 'respondent') on the basis of the performance or conduct of the respondent during employment with the Department of Veterans Affairs.

"(2) A disciplinary board appointed in the case of any respondent shall consist of not less than three nor more than five employees of the Veterans Health Services and Research Administration who are senior in grade to the respondent. The majority of the members of such board shall be employed in the same category of position as the respondent.

"(3) The Chief Medical Director may delegate the performance of the function of appointing a disciplinary board to an employee of the Veterans Health Services and Research Administration who is not involved in deciding whether to file charges to be determined by the board and who is not subordinate to any official involved in making such decision.";

(2) in subsection (b), by striking out "Administrator" and inserting in lieu thereof "Secretary";

(3) in subsection (d)—

(A) in the first sentence, by striking out "Administrator" and all that follows and inserting in lieu thereof "Secretary that the proposed disciplinary action be sustained or modified within limitations prescribed by the Secretary.";

(B) in the second, third, and fourth sentences, by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary";

(4) in subsection (e), by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary"; and

(5) by adding at the end the following:

"(f)(1) A disciplinary board is not required in the case of a disciplinary action if the proposed action is suspension for 14 days or less, reassignment without a reduction in basic pay, reduction in rank without a reduction in basic pay, reprimand, or admonishment.

"(2) An employee against whom a disciplinary action described in paragraph (1) of this subsection is proposed to be taken shall be entitled to—

"(A) an advance written notice stating the specific reasons for the proposed action;

"(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(C) representation by an attorney or other spokesperson, and

"(D) a written decision and the specific reasons for the decision at the earliest practicable date.

"(3) Disciplinary actions described in paragraph (1) of this subsection shall be subject to review under either the provisions of section 4110A of this title (in the case of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5) or an agency review procedure to be established by the Secretary (in the case of such employees who are not members of such a unit). Any such agency review procedure established by the Secretary shall include—

"(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

"(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the Department of Veterans Affairs;

"(C) a prompt report of the findings and recommendations by the impartial examiner; and

"(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the Department on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.".

(b) GRIEVANCES.—(1) Subchapter I of chapter 73 is amended by inserting after section 4110 the following new section:

"§ 4110A. Grievances and certain disciplinary reviews

"(a)(1) The Secretary shall authorize review of Department of Veterans Affairs actions on the following matters under procedures established by collective bargaining in accordance with the provisions of chapter 71 of title 5:

"(A) Grievances of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5.

"(B) Subject to paragraph (2) of this subsection, disciplinary actions described in subsection 4110(f)(1) of this title involving such employees.

"(2) In the case of a review of a disciplinary action involving any question of clinical competence, as determined by either party, any person selected to serve as an arbitrator in such case under procedures established as provided in paragraph (1) of this subsection must be qualified as an arbitrator and must also be (A) qualified as a physician, dentist, or nurse, or (B) otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues.

"(b) For the purpose of resolving grievances of supervisors and employees appointed under authority of this chapter who are not members of a unit determined appropriate under section 7112 of title 5, the Secretary shall authorize review of action of the Department on such grievances pursuant to a Department review procedure established by the Secretary under section 4110(f)(3) of this title.".

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 4110 the following new item:

"4110A. Grievances and certain disciplinary reviews.".

SEC. 251. TEMPORARY APPOINTMENTS OF HEALTH-CARE PERSONNEL.

Section 4114(a)(3) is amended—

(1) in subparagraph (A), by striking out the penultimate sentence and inserting in lieu thereof the following: "Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of nursing approved by the Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secretary and who are pending registration or licensure in a State, or certification by a national board recognized by the Secretary, shall not exceed two years."; and

(2) by striking out subparagraph (C) and inserting in lieu thereof the following:

"(C) A student who has a temporary appointment under this paragraph and who is pursuing a full course of nursing in a recognized school of nursing approved by the Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secretary may be reappointed for a period not to exceed the duration of such student's academic program.".

SEC. 252. HEALTH-CARE PROFESSIONALS CASH AWARDS.

(a) AUTHORITY TO PAY CASH AWARDS.—(1) Subchapter I of chapter 73 is amended by inserting after section 4120 the following new section:

"§ 4120A. Performance awards and cash awards

"(a)(1) The Secretary shall pay—

"(A) performance awards under section 5406 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers; and

"(B) cash awards under section 5407 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers in grades GS-13 through GS-15 of the General Schedule.

"(2) The Secretary may pay performance awards under section 5406 of title 5 to Department employees described in section 4104 of this title who are not supervisors or managers.

"(b) In the application of section 5406(c)(1) of title 5 to the payment of performance awards under subsection (a), the reference to employees covered by the performance management and recognition system shall be deemed to refer to the employees who are covered by paragraph (1)(A) of such subsection and the employees whom the Secretary elects to cover pursuant to paragraph (2) of such subsection.

"(c) The Secretary shall prescribe in regulations the criteria for making performance awards under subsections (a)(1)(A) and (b) of this section.

"(d) Determinations of which employees are supervisors or managers shall be made in accordance with the regulations prescribed to carry out this section, except that for purposes of this section head nurses shall be considered supervisors.

"(e) A cash award under this section shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4120 the following new item:

"4120A. Performance awards and cash awards.".

(b) EFFECTIVE DATE.—(1) The amendments made by subsection (a) shall take effect on October 1, 1991.

(2) Awards may be made under section 4120A of title 38, United States Code (as added by subsection (a)), only for service performed on or after October 1, 1990.

SEC. 253. DEPENDENT CARE ASSISTANCE PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—Subchapter I of chapter 73, as amended by section 264, is further amended by inserting after section 4120A the following new section:

"§ 4120B. Dependent care assistance

"The Secretary shall establish and conduct a dependent care assistance program, which meets the requirements of section 129 of the Internal Revenue Code of 1986, for the care of dependents of employees in the Veterans Health Services and Research Administration.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter, as amended by section 201, is further amended by inserting after the item relating to section 4120A the following new item:

"4120B. Dependent care assistance.".

(c) Implementation Requirement.—The Secretary of Veterans Affairs shall implement the program provided for in section 4120B of title 38, United States Code (as added by subsection (a)), not later than June 1, 1991.

SEC. 254. ASSISTANCE TO HEALTH-PERSONNEL EDUCATIONAL INSTITUTIONS.

(a) Development of New Health Careers.—Section 5091 is amended by inserting "(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)" after "paramedical personnel, and".

(b) Authorization of Appropriations for Grants.—(1) Subchapter III of chapter 82 is amended by adding at the end the following new section:

"§ 5094. Authorization of appropriations

"(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1991 and 1992 and $6,000,000 for each of fiscal years 1993 and 1994.

"(b) The sum appropriated for a fiscal year pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which the sum is appropriated.

"(c) Of the funds appropriated for each fiscal year pursuant to the authorization in subsection (a) of this section, an amount not to exceed 10 percent of the sum so appropriated may be expended for the purpose described in section 5096(2) of this title.".

(2) The table of sections at the beginning of chapter 82 is amended by inserting after the item relating to section 5093 the following new item:

"5094. Authorization of appropriations".

(c) Implementing Regulations.—(1) The Secretary of Veterans Affairs shall prescribe interim final regulations for implementation of the amendment made by subsections (a) and (b) not later than February 1, 1991.

(2) For the purposes of paragraph (1), the term "interim final regulations" means regulations that are in effect until the effective date of final regulations issued for implementation of the amendment made by paragraph (1).

SEC. 255. PILOT PROGRAM OF PAY AND PERSONNEL MANAGEMENT PRACTICES.

(a) In General.—The Chief Medical Director of the Department of Veterans Affairs shall conduct a pilot program at not less than five Department medical centers or independent outpatient clinics during calendar years 1991, 1992, and 1993, in order to determine—

(1) the effects of pay and personnel management practices of the Veterans Health Services and Research Administration on the ability of the Department to recruit and retain persons qualified to provide direct patient-care services or services incident to direct patient-care services in Department health-care facilities as employees in employee position categories in which the Department is experiencing recruitment and retention problems;

(2) whether it is desirable to establish programs which foster interdisciplinary professional collaboration and collegial relationships between physicians, registered nurses, and other employees providing direct patient care, and what effects such programs would have on the ability of the Department to recruit and retain registered nurses;

(3) whether it is desirable to create new alternatives for utilizing the skills and knowledge of registered nurses and other health-care professionals in furnishing direct patient care and services incident to the furnishing of such care, and what effects such alternatives would have on (A) the ability of the Department to recruit and retain persons qualified to provide such care and services, and (B) the cost of providing such care and services; and

(4) whether increasing the pay differential for evening and night shifts will attract adequate numbers of qualified workers for such shifts and result in more permanent day-shift assignments.

(b) Conduct of Pilot Program.—In conducting the pilot program under subsection (a), the Chief Medical Director shall—

(1) at not less than one site, establish a collaborative practice committee involving physicians, nurses, and, as appropriate, other direct health-care personnel;

(2) at not less than one site, significantly increase the pay differential for evening and night service; and

(3) at not less than three sites, implement new alternatives for utilizing the skills and knowledge of registered nurses and other health-care professionals in

furnishing direct patient care and services incident to the furnishing of such care.

(c) **Reports.**—(1)(A) Not later than May 1, 1992, the Chief Medical Director shall submit to the Secretary of Veterans Affairs a report on the experience under the pilot program during the first 12 months such program is conducted. The report shall contain—

(i) the Chief Medical Director's evaluation of the effect of each management practice undertaken in the pilot program on the ability of the Department of Veterans Affairs to recruit and retain health-care employees;

(ii) information on the cost factors associated with each such management practice;

(iii) an evaluation of the functioning and productivity of the employees involved in or affected in any substantial way by such practices;

(iv) a discussion of any effects on the quality and timeliness of care provided to veterans; and

(v) any planned administrative actions and any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate to include in the report on the basis of the results of such pilot program.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit a copy of the report, together with any comments on the report and any recommendations for legislation that the Secretary considers appropriate, to the Committees on Veterans' Affairs of the Senate and House of Representatives.

(2)(A) Not later than May 1, 1994, the Chief Medical Director shall submit to the Secretary a final report on the pilot program required by subsection (a). In such report the Chief Medical Director shall—

(i) update all information contained in the report submitted pursuant to paragraph (1)(A) of this subsection;

(ii) make a final assessment of the pilot program based on the experience under the program during the 36 months for which the program was conducted; and

(iii) make any recommendations for legislation or administrative action that the Chief Medical Director considers appropriate.

(B) Not later than 60 days after receiving the report under subparagraph (A), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report together with—

(i) any comments on the report that the Secretary considers appropriate;

(ii) the Secretary's final assessment of the pilot program based on the experience under the program during the 36 months for which the program was conducted; and

(iii) any recommendations for legislation that the Secretary considers appropriate.

SEC. 256. RATES OF PAY FOR CERTAIN PSYCHOLOGISTS.

Notwithstanding any other provision of law, the Secretary of Veterans Affairs, not later than 90 days after the date of the enactment of this Act, shall utilize the authority provided in section 4107(g) of title 38, United States Code, to increase the rates of pay for clinical or counseling psychologists who hold diplomas as diplomates in psychology from an accredited authority recognized by the Secretary unless the Chief Medical Director of the Department of Veterans Affairs determines that such psychologists are not needed to furnish appropriate quality of psychological services for veterans. The amount by which such rate of pay shall be increased shall be the amount determined by the Secretary, upon the recommendation of the Chief Medical Director, to be necessary to make the pay for such psychologists competitive with the pay of psychologists with the same qualifications and credentials serving in non-Department of Veterans Affairs capacities comparable to the Department capacities in which the Department psychologists are serving.

PART D—SPECIAL PAY FOR PHYSICIANS AND DENTISTS

SEC. 261. SHORT TITLE.

This part may be cited as the "Department of Veterans Affairs Physicians' and Dentists' Corporation Act of 1990".

SEC. 262. REVISION AND REORGANIZATION OF SPECIAL PAY FOR PHYSICIANS AND DENTISTS.

(a) **Redesignation of Subchapters.**—Chapter 73 is amended—

(1) by redesignating subchapters II and III as subchapters III and IV, respectively;

(2) by redesignating sections 4121 through 4124 as sections 4131 through 4134, respectively; and

(3) by redesignating sections 4131 through 4134 as sections 4141 through 4144, respectively.

(b) NEW SPECIAL PAY AUTHORITY.—Chapter 73 is further amended by inserting after subchapter I the following new subchapter:

"SUBCHAPTER II—SPECIAL PAY FOR PHYSICIANS AND DENTISTS

"§ 4121. Special pay: authority

"(a)(1) In order to recruit and retain highly qualified physicians and dentists in the Veterans Health Services and Research Administration, the Secretary may pay special pay to physicians and dentists as provided in this subchapter. Special pay under this subchapter shall be paid under regulations prescribed by the Secretary after the Secretary has received the recommendations of the Chief Medical Director.

"(2) The Secretary may delegate the authority to prescribe the regulations required under paragraph (1) only to the Chief Medical Director. The Chief Medical Director may not redelegate that authority.

"(b) Special pay may be paid to a physician or dentist under this subchapter only pursuant to a written agreement entered into by the physician or dentist with the Department under section 4122 of this title.

"(c) A physician or dentist serving a period of obligated service pursuant to chapter 76 of this title is not eligible for special pay under this subchapter during the first three years of that obligated service, except that, at the discretion of the Chief Medical Director, such a physician or dentist may be paid special pay for full-time status during all or any portion of those three years.

"(d)(1) The Chief Medical Director may designate categories of positions of physicians and dentists in the Veterans Health Services and Research Administration with respect to which the Chief Medical Director determines there is no significant recruitment or retention problem. Physicians or dentists serving in a category of positions so designated shall not be eligible for special pay under this subchapter.

"(2) The Chief Medical Director shall review each year each category of positions that has been designated as ineligible for special pay under this subchapter with a view to determining whether the category continues to present no significant recruitment or retention problem. The Chief Medical Director may withdraw the designation made with respect to any category of positions if the Chief Medical Director determines, on the basis of the review, that such category represents a significant recruitment or retention problem. Upon the withdrawal of a designation with respect to a category of positions, physicians or dentists serving in that category become eligible for special pay under this subchapter. The specification of categories of positions for purposes of this subchapter shall be made in accordance with regulations prescribed under subsection (a) of this section.

"§ 4122. Special pay: agreements

"(a) A physician or dentist who enters into an agreement under this subchapter shall agree to serve in the Veterans Health Services and Research Administration for a period of one to four years in exchange for special pay for the period of the obligated service.

"(b) A physician or dentist who voluntarily, or because of misconduct, fails to complete at least one year of obligated service pursuant to an agreement entered into under this subchapter shall be required to refund the total amount of special pay received under this subchapter unless the Chief Medical Director determines, in accordance with regulations prescribed under section 4121(a) of this title, that the failure was the result of circumstances beyond the control of the physician or dentist.

"(c) A physician or dentist who entered into an agreement under this subchapter and has refunded the full amount, if any, which the physician or dentist became obligated to refund under the agreement shall be eligible to enter into a subsequent agreement under this section.

"(d) Each agreement entered into under this subchapter shall specify the terms under which the Secretary and the physician or dentist may terminate the agreement.

"§ 4123. Special pay: full-time physicians

"Special pay under this subchapter for physicians employed on a full-time basis shall be based on the following special-pay factors and annual rates:

"(1) For full-time status, the annual rate shall be $9,000.

"(2)(A) For length of service as a physician within the Veterans Health Services and Research Administration, the annual rates shall be as follows:

"Length of Service	Rate	
	Minimum	Maximum
2 years but less than 4 years	$4,000	$6,000
4 years but less than 8 years	6,000	12,000
8 years or more	12,000	25,000

"(B) The Chief Medical Director shall specify a uniform national rate for each range of years of service established by or under this paragraph. The Chief Medical Director may, as to length of service in excess of eight years, establish uniform national rates for such ranges of years of service as the Chief Medical Director considers appropriate.

"(3)(A) For service in a medical specialty with respect to which the Chief Medical Director has determined (on a nationwide or other geographic basis or, subject to section 4127(d)(2) of this title, on an individual-facility basis) that there are extraordinary difficulties in the recruitment or retention of qualified physicians, the annual rate shall be not less than $4,000 and not more than $40,000.

"(B) For service by a physician who serves only a portion of a year in a position for which special pay is paid under subparagraph (A), the annual rate shall be calculated on the basis of the proportion of time served in the position for which the special pay is paid.

"(4)(A) For service in an executive position or grade specified in the table below, the annual rate shall be within the range specified for that position or grade as follows:

"Position or Grade	Rate	
	Minimum	Maximum
Chief of Staff or Executive Director Grade	$14,500	$25,000
Service Chief (or a comparable position as determined by the Chief Medical Director)	4,500	15,000

"(B) For service in an executive position specified in the table below, the annual rate shall be rate specified for that position as follows:

"Position	Rate
Chief Medical Director	$45,000
Deputy Chief Medical Director	40,000
Associate Deputy Chief Medical Director	35,000
Assistant Chief Medical Director (or a comparable position as determined by the Chief Medical Director)	30,000
Deputy Assistant Chief Medical Director	27,500
Service Director	25,000
Deputy Service Director	22,500

"(C) For service by a physician who serves only a portion of a year in an executive position listed in subparagraph (B) of this paragraph or who serves a portion of a year in that position and also serves a portion of the same year in another position or grade for which special pay is provided under this section, the annual rate shall be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

"(5) For specialty certification or first board certification, the annual rate shall be $2,000, and for subspecialty certification or secondary board certification, an additional $500.

"(6) For service in a specific geographic location with respect to which the Chief Medical Director has determined that there are extraordinary difficulties in the recruitment or retention of qualified physicians generally, or in the recruitment or retention of a specific category of physicians, the annual rate shall be not less than $2,000 nor more than $15,000.

"(7)(A) For service by an individual physician with exceptional qualifications within a specialty, the annual rate shall be not more than $15,000.

"(B) Special pay under this paragraph may be paid only if personally approved by the Chief Medical Director on a case-by-case basis and only to the extent that the amount paid under this paragraph, when added to the total of the amounts paid to the physician under paragraphs (1) through (6) of this section, does not exceed the total amount that may be paid under those paragraphs to a physician with the same length of service, specialty, and position as the physician concerned.

"§ 4124. Special pay: part-time physicians

"(a) Subject to section 4127(e) of this title and subsection (b) of this section, special pay under this subchapter for physicians employed on a part-time basis shall be based on the special-pay factors and annual rates specified in section 4123 of this title.

"(b) The annual rate of special pay paid to a physician employed on a part-time basis shall bear the same ratio to the annual rate that the physician would be paid under section 4123 (other than for full-time status) if the physician were employed on a full-time basis as the amount of part-time employment by the physician bears to full-time employment.

"§ 4125. Special pay: full-time dentists

"(a) Special pay under this subchapter for dentists employed on a full-time basis shall be based on the following special pay factors and annual rates:

"(1) For full-time status, the annual rate shall be $3,500.

"(2)(A) For length of service as a dentist within the Veterans Health Services and Research Administration, the annual rates shall be as follows:

"Length of Service	Rate	
	Minimum	Maximum
2 years but less than 4 years	$1,300	$2,000
4 years but less than 8 years	2,000	4,000
8 years or more	4,000	8,300

"(B) The Chief Medical Director shall specify a uniform national rate for each range of years of service established by or under this paragraph. The Chief Medical Director may, as to length of service in excess of eight years, establish uniform national rates for such ranges of years of service as the Chief Medical Director considers appropriate.

"(3)(A) For service in a dental specialty with respect to which the Chief Medical Director has determined (on a nationwide or other geographic basis or, subject to section 4127(d)(2) of this title, on an individual facility basis) that there are extraordinary difficulties in the recruitment or retention of qualified dentists, the annual rate shall be not less than $2,000 nor more than $30,000.

"(B) For service by a dentist who serves only a portion of a year in a position for which special pay is paid under subparagraph (A), the annual rate shall be calculated on the basis of the proportion of time served in the position for which the special pay is paid.

"(4)(A) For service in an executive position or grade specified in the table below, the annual rate shall be within the range specified for that position or grade as follows:

"Position or Grade	Rate	
	Minimum	Maximum
Chief of Staff or Executive Director Grade	$3,500	$8,000
Service Chief (or a comparable position as determined by the Chief Medical Director)	3,000	5,000

"(B) For service in an executive position specified in the table below, the annual rate shall be the rate specified for that position as follows:

"Position	Rate
Assistant Chief Medical Director (or a comparable position as determined by the Chief Medical Director)	$10,000
Deputy Assistant Chief Medical Director	10,000
Service Director	9,000
Deputy Service Director	8,000

"(C) For service by a dentist who serves only a portion of a year in an executive position listed in subparagraph (B) of this paragraph or who serves only a portion of a year in that position and also serves a portion of the same year in another position or grade for which special pay is provided under this section, the annual rate shall be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

"(5) For specialty certification or first board certification, the annual rate shall be $2,000, and for subspecialty certification or secondary board certification, an additional $500.

"(6) For service in a specific geographic location with respect to which the Chief Medical Director has determined there are extraordinary difficulties in the recruitment or retention of qualified dentists generally, or in the recruitment or retention of a specific category of dentists, the annual rate shall be not less than $1,750 nor more than $5,000.

"(7)(A) For service by an individual dentist with exceptional qualifications within a specialty, the annual rate shall be not more than $5,000 .

"(B) Special pay under this paragraph may be paid only if personally approved by the Chief Medical Director on a case-by-case basis and only to the extent that the amount paid under this paragraph, when added to the total of the rates paid to the dentist, under paragraphs (1) through (6) of this section, does not exceed the total of the rates that may be paid under those paragraphs to a dentist with the same length of service, specialty, and position as the dentist concerned.

"§ 4126. Special pay: part-time dentists

"(a) Subject to section 4127(e) of this title and subsection (b) of this section, special pay under this subchapter for dentists employed on a part-time basis shall be based on the special-pay factors and annual rates specified in section 4125 of this title.

"(b) The annual rate of special pay paid to a dentist employed on a part-time basis shall bear the same ratio to the annual rate that the dentist would be paid under section 4125 of this title (other than for full-time status) if the dentist were employed on a full-time basis as the amount of part-time employment by the dentist bears to full-time employment.

"§ 4127. Special pay: general provisions

"(a)(1)(A) Except as provided in subparagraph (B) of this paragraph—

"(i) a physician may not be paid special pay under paragraph (3) of section 4123 of this title for any period for which the physician is paid special pay for service in an executive position under paragraph (4)(B) of that section; and

"(ii) a dentist may not be paid special pay under paragraph (3) of section 4125 of this title for any period for which the dentist is paid special pay for service in an executive position under paragraph (4)(B) of that section.

"(B) A physician may be paid special pay under paragraph (3) of section 4123 of this title and a dentist may be paid special pay under paragraph (3) of section 4125 of this title if the Chief Medical Director determines that the specialty skills of the physician or dentist for which the special pay is provided are necessary in order for the physician or dentist to carry out effectively the executive position in which the physician or dentist serves.

"(2) Scarce specialty pay may be paid under section 4123(3), 4124(b), 4125(3), or 4126(b) of this title to a physician or dentist serving as a Chief of Staff only if the Chief Medical Director (A) determines that such pay is necessary for the purpose of recruitment and retention of highly qualified physicians or dentists to serve as Chiefs of Staff in the Veterans Health Services and Research Administration, and (B) personally approves the payment of such pay in the case of such physician or dentist.

"(b) The following determinations shall be made pursuant to regulations prescribed under section 4121(a) of this title:

"(1) A determination that there are extraordinary difficulties (on a nationwide or other geographic basis or on an individual facility basis) in the recruitment or retention of qualified physicians in a medical specialty or in the recruitment or retention of qualified dentists in a dental specialty.

"(2) A determination of whether there are extraordinary difficulties in the recruitment or retention of qualified physicians generally, or in the recruitment or retention of a specific category of physicians in a specific geographic location or in the recruitment or retention of qualified dentists generally, or in the recruitment or retention of a specific category of dentists, in a specific geographic location.

"(c)(1) A determination for the purposes of this subchapter that there are extraordinary difficulties in the recruitment or retention of qualified physicians in a medical specialty, or in the recruitment or retention of qualified dentists in a dental specialty, with regard to the needs of an individual medical facility may be made only upon the request of the director of that facility.

"(2)(A) If the director of a Department of Veterans Affairs medical facility determines that the facility is unable to recruit or retain physicians or dentists in a specific category for that facility under paragraphs (3) and (6) of section 4123, section 4124(b), paragraphs (3) and (6) of section 4125, or section 4126(b) of this title, the director shall notify the Chief Medical Director and recommend the payment of special pay or an increase in the payment of special pay, as appropriate, for that category of physicians or dentists.

"(B) The special pay (or the increase in special pay) recommended by the director shall become effective with respect to that facility 45 days after the date on which the Chief Medical Director receives the notification of the director unless, before the expiration of the 45 days, the Chief Medical Director disapproves the recommendation of the director. The recommended special pay may become effective before the expiration of the 45 days, at the discretion of the director of the facility, if the Chief Medical Director approves the recommendation before the expiration of the 45 days.

"(C) The approval or disapproval under this subsection of the recommendation of a director of a facility may be delegated or redelegated to any officer or employee of the Veterans Health Services and Research Administration who holds a position in the direct line of authority between the Chief Medical Director and the director of the facility higher than the one held by the director making the recommendation, as determined by the Chief Medical Director.

"(d)(1) Except as provided in paragraph (2) of this subsection, if special pay under paragraph (3) of section 4123 of this title is paid to physicians or dentists on a nationwide, other geographic, or individual-facility basis, all physicians or dentists, as the case may be, with the same specialty serving in the geographic area or facility concerned shall be paid the same rate of such pay.

"(2) Special pay for service in a specialty may be paid to a physician or dentist under section 4123(3), 4124(b), 4125(3), or 4126(b) of this title (as the case may be) on an individual-facility basis only if—

"(A) the maximum amount of special pay permitted under the section 4123(6), 4124(b), 4125(6) or 4126(b) of this title for service in a specific geographic location is being paid physicians or dentists, as the case may be, at the facility concerned, and

"(B) the Chief Medical Director, upon the request of the facility director determines that such maximum amount is insufficient to meet the needs of that facility for qualified physicians or dentists in that specific category of physicians or dentists, as the case may be. If special pay under this paragraph is paid to a physician or dentist on as individual-facility basis, all physicians or dentists, as the case may be, with the same specialty serving at the facility concerned shall be paid the same rate of such pay.

"(e)(1) Except as provided in paragraph (2) of this subsection, special pay may not be paid under this section to a physician or dentist who—

"(A) is employed on less than a half-time basis or on an intermittent basis;

"(B) occupies an internship or residency training position; or

"(C) is a reemployed annuitant.

"(2) If the Chief Medical Director determines that payment of special pay to a physician or dentist who is employed on a less than half-time basis is the most cost-effective way available for providing needed medical or dental specialist services at a Department facility, the Chief Medical Director may authorize the payment of special pay for factors other than for full-time status to that physician or dentist at a rate computed on the basis of the proportion that the part-time employment of the physician or dentist bears to full-time employment.

"(f)(1) A physician or dentist who—

"(A) is employed on a full-time basis in the Veterans Health Services and Research Administration,

"(B) was employed as a physician or dentist on a full-time basis in the Veterans Health Services and Research Administration on the day before the effective date of this subchapter, and

"(C) was being paid only for the special-pay factors of primary, full-time, and tenure of service,

shall be paid special pay under this subchapter at a rate not less than the rate of special pay the physician or dentist was paid under section 4118 of this title on the day before such effective date.

"(2) A physician or dentist who—

"(A) is employed on a part-time basis in the Veterans Health Services and Research Administration,

"(B) was employed as a physician or dentist on a part-time basis in the Veterans Health Services and Research Administration on the day before the effective date of this subchapter, and

"(C) was being paid only for the special-pay factors of primary and tenure of service, shall be paid special pay under this subchapter at a rate not less than the rate of special pay the physician or dentist was paid under section 4118 of this title on the day before such effective date.

"(g) Special pay under this subchapter shall be paid in equal installments in accordance with regularly established pay periods.

"(h) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

"§ 4128. Special pay: coordination with other benefit laws

"(a) Special pay under this subchapter shall be in addition to any other pay or allowances to which a physician or dentist is entitled.

"(b)(1) A physician or dentist who has no section 4118 service and has completed not less than 15 years of service as a physician or dentist in the Veterans Health Services and Research Administration shall be entitled to have special pay paid to the physician or dentist under this subchapter considered basic pay for the purposes of chapter 83 or 84 of title 5, as appropriate.

"(2) A physician or dentist who has section 4118 service and has completed a total of not less than 15 years of service as a physician or dentist in the Department of Medicine and Surgery of the Department of Veterans Affairs (or its predecessor) and the Veterans Health Services and Research Administration shall be entitled to have special pay paid to the physician or dentist under this subchapter considered basic pay for the purposes of chapter 83 or 84, as appropriate, of title 5 as follows:

"(A) In an amount equal to the amount that would have been so considered under section 4118 of this title on the day before the effective date of this section based on the rates of special pay the physician or dentist was entitled to receive under that section on the day before such effective date.

"(B) With respect to any amount of special pay received under this subchapter in excess of the amount such physician or dentist was entitled to receive under section 4118 of this title on the day before the effective date of this section, in an amount equal to 20 percent of such excess amount for each two years that the physician or dentist has completed as a physician or dentist in the Veterans Health Services and Research Administration after the effective date of this section.

"(3) All special pay paid under this subchapter shall be included in average pay (as defined in sections 8331(4) or 8401(3) of title 5, as appropriate) for purposes of computing benefits paid under section 8337, 8341(d) or (e), 8443, or 8351 of such title.

"(4) Special pay paid under section 4118 of this title, as in effect before the effective date of this section, to a physician or dentist who has section 4118 service shall be credited to the physician or dentist for the same purposes and in the same manner and to the same extent that such special pay was credited to the physician or dentist before such effective date.

"(5) For purposes of this subsection:

"(A) The term 'physician or dentist who has no section 4118 service' means a physician or dentist employed as a physician or dentist in the Veterans Health Services and Research Administration who has no previous service as a physician or dentist in the Department of Medicine and Surgery of the Department of Veterans Affairs (or its predecessor) before the effective date of this section.

"(B) The term 'physician or dentist who has section 4118 service' means a physician or dentist employed as a physician or dentist in the Veterans Health Services and Research Administration who has previous service as a physician or dentist in the Department of Medicine and Surgery of the Department of Veterans Affairs (or its predecessor) or in the Veterans Health Services and Research Administration before the effective date of this section.

"§ 4129. Periodic review of pay of physicians and dentists; quadrennial report

"(a) In order to make possible the recruitment and retention of a well-qualified work force of physicians and dentists capable of providing a high quality of care for eligible veterans, it is the policy of Congress to ensure that the levels of total pay for physicians and dentists of the Veterans Health Services and Research Administration are set at levels reasonably comparable—

"(1) with levels of total pay of physicians and dentists employed by or serving in other departments and agencies of the Federal Government; and

"(2) with the incomes received by non-Federal sector physicians and dentists for the performance of services as physicians or dentists.

"(b)(1) To assist Congress and the President in carrying out the policy stated in subsection (a) of this section, the Secretary shall—

"(A) define the bases for pay distinctions, if any, among various categories of physicians and dentists, including distinctions between physicians and dentists employed by the Veterans Health Services and Research Administration and physicians and dentists employed by other departments and agencies of the Federal Government and between all Federal sector and non-Federal sector physicians and dentists; and

"(B) obtain measures of income from the employment or practice of physicians and dentists outside the Department, including both the Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the rates of special pay for Department physicians and dentists.

"(2) The Secretary shall submit to the President a report, on such date as the President may designate but not later than December 31, 1992, and once every four years thereafter, recommending appropriate rates of special pay to carry out the policy set forth in subsection (a) of this section with respect to the pay of physicians and dentists of the Veterans Health Services and Research Administration. The Secretary shall include in such report, when considered appropriate and necessary by the Secretary, recommendations for modifications of the special pay levels set forth in this subchapter whenever—

"(A) such Administration is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists because the total income and other employment benefits received by physicians and dentists for the performance of services as physicians and dentists outside such Administration who perform comparable types of duties is significantly in excess of the levels of total compensation (including basic pay, special pay, and other employment benefits) of physicians and dentists of such Administration; or

"(B) other extraordinary circumstances are such that special pay levels need to be modified in order to recruit and retain a sufficient number of well-qualified physicians and dentists.

"(c) The President shall specify in the budget next transmitted to the Congress under section 1105 of title 31 after the submission of each report of the Secretary under subsection (b)(2) of this section the exact rates of special pay recommended for physicians and dentists under this subchapter and the cost of those rates compared with the cost of the special-pay rates in effect under this subchapter at the time the budget is transmitted.

"§ 4130. Annual report

"The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report on the use of the special pay authority provided in this subchapter. The Secretary shall submit the report each year as part of the budget justification documents submitted in support of the budget submitted for that year pursuant to section 1105 of title 31. Each such report shall include the following:

"(1) A review of the use of the authorities provided in this subchapter (including the Secretary's and Chief Medical Director's actions, findings, recommendations, and other activities under this subchapter) during the fiscal year preceding the fiscal year in which the report is submitted and for so much of the current fiscal year as may be practicable.

"(2) The Department's plans for the use of the authorities provided in this subchapter for the current and next fiscal years.

"(3) A description of the amounts of special pay paid in each category of special pay during the preceding fiscal year, shown by category of pay.

"(4) A list of the geographic areas and the scarce medical and dental specialties for which special pay was paid during the preceding fiscal year, a list of the geographic areas and scarce specialties for which special pay is being paid during the current fiscal year, and a list of the geographic areas and scarce specialties for which special pay is expected to be paid during the next fiscal year, together with a summary of any differences among the three lists.

"(5) The number of physicians and dentists—

"(A) who left employment with the Veterans Health Services and Research Administration during the preceding fiscal year,

"(B) who changed from full-time status to part-time status during the preceding fiscal year, and

"(C) who changed from part-time status to full-time status during the preceding fiscal year,

and a summary of the reasons for such actions.

"(6) The number of positions, by specialty, created and the number of positions, by specialty, abolished during the preceding fiscal year, and a summary of the reasons for such actions.

"(7) The number of unfilled physician and dentist positions in each specialty in the Veterans Health Service and Research Administration, the average and maximum lengths of time that such positions have been unfilled, and a summary of the reasons that such positions remain unfilled and, in the case of any specialty not designated as a scarce specialty for purposes of special pay under this subchapter, an explanation (including comparisons with other specialties that have been so designated) of why the specialty has not been so designated.

"(8) An assessment of the need for periodically adjusting the rates of special pay of physicians and dentists of the Veterans Health Services and Research Administration to reflect cost-of-living increases as a means of recruiting and retaining high quality medical personnel.".

SEC. 263. CONFORMING AND TECHNICAL AMENDMENTS.

(a) Repeal of Section 4118.—Section 4118 is repealed.

(b) Table of Sections.—The table of sections at the beginning of chapter 73 is amended—

(1) by redesignating the subchapter designation pertaining to subchapter II as subchapter III and redesignating the section numbers pertaining to sections 4121 through 4124 as sections 4131 through 4134, respectively;

(2) by redesignating the subchapter designation pertaining to subchapter III as subchapter IV and by redesignating the section numbers pertaining to sections 4131 through 4134 as sections 4141 through 4144, respectively; and

(3) by inserting after the matter relating to subchapter I the following:

"SUBCHAPTER II—SPECIAL PAY FOR PHYSICIANS AND DENTISTS

"4121. Special pay: authority.
"4122. Special pay: agreements.
"4123. Full-time physicians.
"4124. Part-time physicians.
"4125. Full-time dentists.
"4126. Part-time dentists.
"4127. General provisions.
"4128. Coordination with other benefit laws.
"4129. Periodic review of pay of physicians and dentists; quadrennial report.
"4130. Annual report.".

(c) Cross-Reference Amendments.—(1) Section 4107 is amended—

(A) in subsection (c), by striking out "section 4118 of this title" and inserting in lieu thereof "subchapter II of this chapter"; and

(B) in subsection (d), by striking out "sections 4118 and 4120 of this title" and inserting in lieu thereof "section 4120 of this title and subchapter II of this chapter".

(2) Section 4120(f) is amended by striking out "section 4118 of this title" and inserting in lieu thereof "subchapter II of this chapter".

(d) Technical and Conforming Amendments to Redesignated Subchapters.—(1) Subchapters III and IV (as redesignated by section 262) and subchapters V and VI of chapter 73 are each amended—

(A) by striking out "Administrator" and "Administrator's" each place they appear and inserting in lieu thereof "Secretary" and "Secretary's", respectively;

(B) by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department"; and

(C) by striking out "Department of Medicine and Surgery" each place it appears and inserting in lieu thereof "Veterans Health Services and Research Administration".

(2) Sections 4141 and 4143(b) (as redesignated by section 262) are each amended by striking out "section 4134" and inserting in lieu thereof "section 4144".

(3) Section 4142 is amended by striking out "section 4134" and inserting in lieu thereof "section 4144".

(4) Section 4144 (as redesignated by section 262) is amended—

(A) in subsection (a), by striking out "section 4131", "section 4132", and "section 4133" and inserting in lieu thereof "section 4141", "section 4142", and "section 4143", respectively; and

(B) in subsection (c)—

(i) by striking out "sections 4131, 4132, and 4133" and inserting in lieu thereof "sections 4141, 4142, and 4143"; and

(ii) by striking out "section 4132(b)(2)(C)" and inserting in lieu thereof "section 4142(b)(2)(C)".

(5) Sections 629(d) and 653(b) are each amended by striking out "4132" and inserting in lieu thereof "4142".

SEC. 264. REIMBURSEMENT OF CONTINUING PROFESSIONAL EDUCATION EXPENSES FOR PHYSICIANS AND DENTISTS.

(a) IN GENERAL.—Section 4113 is amended—

(1) by inserting "(a)" before "The" at the beginning; and

(2) by adding at the end the following:

"(b) The Chief Medical Director shall reimburse any full-time board-certified physician or dentist appointed under section 4104(1) of this title, and may reimburse any other physician or dentist serving in the Veterans Health Services and Research Administration, for expenses incurred for continuing professional education activities approved under criteria prescribed by the Chief Medical Director. The maximum amount of the reimbursement may not exceed $1,000 per year, except as otherwise determined by the Chief Medical Director.".

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§ 4113. Travel expenses of certain employees; continuing professional education of physicians and dentists".

(2) The table of sections at the beginning of chapter 73 is amended by striking out the item relating to section 4113 and inserting in lieu thereof the following:

"4113. Travel expenses of certain employees; continuing professional education of physicians and dentists.".

SEC. 265. EFFECTIVE DATE AND TRANSITION.

(a) EFFECTIVE DATES.—(1) The amendments made by sections 262 and 263 shall apply with respect to pay periods beginning more than 180 days after the date of the enactment of this Act.

(2) The amendments made by section 264 shall apply with respect to expenses incurred after September 30, 1990.

(b) SAVINGS PROVISION.—Except as provided in subsection (c), an agreement entered into under section 4118 of title 38, United States Code, before the effective date of the repeal of that section shall remain in effect in accordance with the terms of that agreement and the provisions of such section shall continue to apply to such agreement as if such section had not been repealed.

(c) TRANSITION FOR CERTAIN MULTIYEAR AGREEMENTS.—(1) The Secretary of Veterans Affairs shall terminate an agreement that was entered into under section 4118 of title 38, United States Code, before the effective date of the repeal of that section if—

(A) the agreement covers a period in excess of one year;

(B) the agreement expires more than one year after that effective date;

(C) the physician or dentist concerned requests termination of the agreement; and

(D) the agreement is terminated for the purpose of permitting the physician or dentist concerned to enter into a new agreement under subchapter II of chapter 73 of title 38, United States Code, as added by section 262.

(2) The termination of an agreement under paragraph (1) may take effect only after the physician or dentist has completed the first year of service under the agreement.

(d) PROHIBITION OF RETROACTIVE AGREEMENTS.—An agreement entered into under subchapter II of chapter 73 of title 38, United States Code, as added by section 262, may not provide special pay with respect to a period before the date on which the agreement is entered into.

SEC. 266. ELECTION FOR CREDITING OF SPECIAL PAY FOR RETIREMENT ANNUITY AND INSURANCE PURPOSES.

(a) Each employee of the Department of Veterans Affairs (or its predecessor) described in paragraph (1) of section 103(b) of the Veterans' Administration Health-Care Amendments of 1980 (Public Law 96-330; 94 Stat. 1035) who elected not to have compensation provided such employee as special pay under section 4118 of title 38, United States Code (as in effect on the day before the effective date of the repeal of such section by section 263 of this Act), included as basic pay for purposes of chapter 83 or 84 of title 5, United States Code, appropriate, may elect to have special pay paid to such employee under subchapter II (as amended by section 262 of this Act) of chapter 73 of title 38, United States Code, on and after the effective date of the amendments made to that chapter by this Act considered basic pay for purposes of chapter 83 or 84, as appropriate, of title 5, United States Code, and included in average pay for the purposes of sections 8331(4) or 8401(3) of such title (as appropriate) in the same manner and to the same extent as provided in section 4128 of title 38, United States Code (as added by section 262 of this Act). An election under this section must be made in writing by the physician or dentist at the time the physician or dentist first enters into an agreement under such subchapter. An election under this section is irrevocable.

TITLE III—EDUCATION AND EMPLOYMENT

SEC. 301. POSTPONEMENT OF TIME LIMITATION ON COUNTING OF VIETNAM-ERA VETERANS IN DISABLED VETERANS OUTREACH PROGRAM SPECIALISTS FUNDING FORMULA.

Section 2001(2) is amended by inserting before the period at the end ", except that a veteran may be considered to be a veteran of the Vietnam era for the purposes of this chapter until December 31, 1993".

SEC. 302. EXPANSION OF EMPLOYMENT AND TRAINING INFORMATION PROGRAM.

(a) PROGRAM EXPANSION.—In order to address more effectively the needs of increasing numbers of members of the Armed Forces being separated from active duty, and notwithstanding section 408(b) of the Veterans' Benefits Amendments of 1989 (38 U.S.C. 2000 note), the Secretary of Labor (hereafter in this section referred to as the "Secretary") may expand the pilot program provided for in section 408 of that Act so as to furnish employment and training information and services under that program in more than 10 geographically dispersed States. Any expansion of the pilot program shall be made subject to subsection (b).

(b) REQUIREMENTS.—The Secretary may expand the pilot program referred to in subsection (a) only if the Secretary determines, after consultation with the Secretary of Veterans Affairs and the Secretary of Defense, that—

(1) the program has been successful in providing beneficial information and training to members separated from the Armed Forces;

(2) the expansion is necessary to address more effectively an increase in the number of such members who will be separated from the Armed Forces in the future;

(3) the program has received sufficient funds, personnel, and other resources from the Departments of Labor, Defense, and Veterans Affairs to achieve the purposes for which the program was established;

(4) the program, if expanded, will continue to receive such sufficient funds, personnel, and other resources to achieve the purposes for which the program was established; and

(5) the expansion will not interfere with the provision of services or other benefits to eligible veterans and other eligible recipients of such services or benefits.

(c) NOTIFICATION TO COMMITTEES ON VETERANS' AFFAIRS.—(1) Not less than 60 days before initiating any expansion under this section, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the expansion. The report shall specify the location of the site or sites designated for such expansion and set forth the bases for the determinations made under subsection (b).

(2) Upon the request of the Secretary of Defense, the Secretary of Labor may waive the provisions of paragraph (1) in cases in which the Secretary determines that a waiver is necessary in order to respond to an urgent need for expansion as a result of a major demobilization. In the case of such a waiver, the Secretary, not later than the date on which the expansion is initiated, shall provide a report providing the information described in paragraph (1) and the reasons for the waiver.

(d) UTILIZATION OF RESOURCES.—Section 408(c) of the Veterans' Benefits Amendments of 1989 (38 U.S.C. 2000 note) is amended to read as follows:

"(c) RESOURCES.—(1) The Secretary of Labor shall request resources and participation necessary to support the pilot program referred to in this section from the Secretary of Defense and the Secretary of Veterans Affairs. The Secretary of Labor shall provide for the coordination of the resources and participation so provided.

"(2) The Secretary may request resources and participation necessary to support the pilot program referred to in this section from, to the extent feasible, representatives of veterans' service organizations.

"(3) The Secretary shall utilize disabled veterans' outreach program specialists or local veterans' employment representatives, to the maximum extent feasible, to furnish employment and training information and services under the pilot program.".

SEC. 303. VOCATIONAL REHABILITATION FOR DISABLED SERVICEPERSONS PENDING DISCHARGE.

(a) IN GENERAL.—Section 1502(1)(B) is amended by striking out "for a service-connected disability" and all that follows through "determines" and inserting in lieu thereof "or is receiving outpatient medical treatment, for a service-connected disability pending discharge from active military, naval, or air service, and the Secretary determines that (i) the facility providing the hospitalization or treatment either is doing so under contract or agreement with the Secretary concerned or is under the jurisdiction of the Secretary concerned, and (ii) the person is suffering from a disability which".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1990.

SEC. 304. EXTENSION OF THE PERIOD PRECEDING AUTOMATIC DISENROLLMENT UNDER CHAPTER 32.

Section 1632(b)(1) is amended by inserting before the comma "and at the end of one year thereafter has not filed a claim for utilizing such entitlement".

SEC. 305. PROVISION FOR CERTAIN INDIVIDUALS TO ELIMINATE AN OVERPAYMENT BY PERFORMING WORK-STUDY SERVICES.

(a) IN GENERAL.—(1) Section 1685 is amended by adding at the end the following new subsection:

"(e)(1) Subject to paragraph (2) of this subsection, the Secretary may, notwithstanding any other provision of law, enter into with an individual an agreement under this section, or a modification of such an agreement, whereby the individual agrees to perform services of the kind described in clauses (A) through (E) of subsection (a)(1) of this section and agrees that the Secretary shall, in lieu of paying the work-study allowance payable for such services, as provided in subsection (a) of this section, deduct the amount of the allowance from the amount which the individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program under this chapter, chapter 30, 31, 32, 35, or 36 (other than an education loan under subchapter III) of this title, or chapter 106 of title 10.

"(2)(A) Subject to subparagraph (B) of this paragraph, the provisions of this section (other than those provisions which are determined by the Secretary to be inapplicable to an agreement under this subsection) shall apply to any agreement authorized under paragraph (1) of this subsection.

"(B) For the purposes of this subsection, the Secretary may—

"(i) waive, in whole or in part, the limitations in subsection (a) of this section concerning the number of hours and periods during which services can be performed by the individual and the provisions of subsection (b) of this section requiring the individual's pursuit of a program of rehabilitation, education, or training;

"(ii) in accordance with such terms and conditions as may be specified in the agreement under this subsection, waive or defer charging interest and administrative costs pursuant to section 3115 of this title on the indebtedness to be satisfied by performance of the agreement; and

"(iii) notwithstanding the indebtedness offset provisions of section 3114 of this title, waive, adjust, or defer until the termination of an agreement under this subsection the deduction of all or any portion of the amount of indebtedness covered by the agreement from future payments to the individual as described in section 3114 of this title.

"(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph, an agreement authorized under this subsection shall terminate in accordance with the provisions of this section and the terms and conditions of the agreement which are consistent with this subsection.

"(B) In no event shall an agreement under this subsection continue in force after the total amount of the individual's indebtedness described in paragraph (1) of this subsection has been recouped, waived, or otherwise liquidated.

"(C) Notwithstanding the provisions of subparagraphs (A) and (B) of this paragraph, if the Secretary finds that an individual was without fault and was allowed to perform services described in the agreement after its termination, the Secretary shall, as reasonable compensation therefor, pay the individual at the applicable hourly minimum wage rate for such services as the Secretary determines were satisfactorily performed.

"(4) The Secretary shall promulgate regulations to carry out this subsection.".

(b) CONFORMING AND TECHNICAL AMENDMENTS.—(1) Section 1685(a) is amended in paragraph (2) by inserting "and subsection (e) of this section" after "subsection".

(2) Section 1685(b) is amended by inserting before "utilize" in the first sentence ", subject to the provisions of subsection (e) of this section,".

(3) Section 3114(a) is amended by inserting before the comma "and section 1685(e) of this title".

(4) Section 3115(a) is amended by striking out "section 3102" and inserting in lieu thereof "sections 1685(e) and 3102".

SEC. 306. EDUCATIONAL ASSISTANCE FOR FLIGHT TRAINING.

(a) Post-Vietnam Era Veterans' Educational Assistance.—Section 1641 is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) by inserting after subsection (a) the following new subsection (b):

"(b)(1) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 1673(b) of this title) by an individual entitled to basic educational assistance under this chapter if—

"(A) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

"(B) the individual possesses a valid pilot's license and meets the medical requirements necessary for a commercial pilot's license; and

"(C) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

"(2) This subsection shall not apply to a course of flight training that commences on or after October 1, 1994.".

(b) Benefit Amount and Entitlement Charge.—Section 1631 of such title is amended by adding at the end the following new subsection:

"(f)(1) Notwithstanding any other provision of this section, each individual who is pursuing a program of education consisting exclusively of flight training approved, as meeting the requirements of section 1641(b) of this title shall be paid a monthly benefit under this chapter in the amount equal to 60 percent of the established charges for tuition and fees (other than tuition and fees charged for or attributable to solo flying hours) which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

"(2) No monthly benefit payment may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

"(3) The number of months of entitlement charged in the case of any individual for a program of education described in paragraph (1) of this subsection shall be equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such program by the monthly rate of educational assistance which, except for paragraph (1) of this subsection, such individual would otherwise be paid under subsection (a) of this section.".

(c) Effective Date.—The amendments made by this section shall take effect on October 1, 1990.

SEC. 307. VIETNAM-ERA GI BILL ELIGIBILITY FOR CERTAIN SERVICE ACADEMY GRADUATES.

(a) In General.—Section 1652(a) of title 38, United States Code, is amended—

(1) in paragraph (1)—

(A) by striking out "or" at the end of clause (B);

(B) by striking out the period at the end of clause (C) and inserting in lieu thereof "; or"; and

(C) by adding at the end the following:

"(D)(i) before January 1, 1977, commenced the third academic year as a cadet or midshipman at one of the service academies or the third academic year as a member of the Senior Reserve Officers' Training Corps in a program of educational assistance under section 2104 or 2107 of title 10 if the individual (I) served on active duty for a period of more than 180 days pursuant to an appointment as a commissioned officer received upon graduation from one of the service academies or upon satisfactory completion of advanced training (as defined in section 2101 of title 10) as a member of the Senior Reserve Officers' Training Corps, respectively, and (II) was discharged or released from such period of active duty under conditions other than dishonorable; and

"(ii) before January 1, 1990, submits to the Secretary of Veterans Affairs, in such form and manner as such Secretary may prescribe, an irrevocable election to be eligible after the date of such election for assistance under this chapter and, if enrolled under the chapter 32 program of educational assistance under this title at the time of such election, to be disenrolled from such program at that time."; and

(2) by adding at the end the following:

"(4) For the purposes of this subsection, the term 'service academies' means the United States Military Academy, the United States Naval Academy, the United States Air Force Academy, and the United States Coast Guard Academy.".

(b) CONFORMING AMENDMENT.—Section 1652(a)(2) of such title is amended by striking out "or (B)" and inserting in lieu thereof ", (B), or (D)".

(c) DISENROLLMENT FROM CHAPTER 32 PROGRAM AND REFUNDS OF CONTRIBUTIONS.—Upon receipt of an election under clause (D)(ii) of section 1652(a)(1) of title 38, United States Code (as added by subsection (a)(1) of this section), the Secretary of Veterans Affairs shall—

(1)(A) not later than 60 days after receiving such an election, refund to the individual concerned the amount, if any, of the individual's unused contributions to the Post-Vietnam Era Veterans Education Account (hereafter in this subsection referred to as the "VEAP Account"); and

(B) if the individual has received educational assistance under chapter 32 of such title for the pursuit of a program of education, pay to the individual (out of funds available for the payment of educational assistance under chapter 34 of such title) an amount equal to the amount by which the amount of the educational assistance that the individual would have received under chapter 34 of such title for the pursuit of such program exceeds the amount of the educational assistance that the individual received under such chapter 32 for the pursuit of such program; and

(2) refund to the Secretary of Defense the amount contributed by such Secretary to the VEAP Account on behalf of such individual remaining in the Account.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as of January 1, 1977.

SEC. 308. LIMITATIONS ON CHANGES OF PROGRAMS OF EDUCATION.

(a) REPEAL OF LIMITATION ON NUMBER OF CHANGES.—(1) Section 1791(a) is amended by striking out "Except" and all that follows through "education, but" and inserting in lieu thereof "An eligible veteran or an eligible person who has not made a change of program of education pursued by such veteran or person, as the case may be, may make one such change without the approval of the Secretary. Except as provided in subsections (b) and (c) of this section,".

(2) Section 1791 is amended—

(A) in subsection (b), by striking out the matter above clause (1) and inserting in lieu thereof "The Secretary may approve any change in program (including any change in the case of a veteran or person not entitled to make a change under subsection (a) of this section) if the Secretary finds—"; and

(B) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The Secretary may also approve any change of program of education if the Secretary finds such change is necessitated by circumstances beyond the control of the eligible veteran or eligible person.".

(b) COUNSELING REQUIREMENT.—(1) Section 1791(b)(1) is amended by inserting ", determined, in the case of each change after the eligible veteran's or eligible person's first change, as provided in subsection (d) of this section" after "abilities".

(2) Section 1791 is amended—

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following new subsection (d):

"(d) The Secretary may approve a second or subsequent change of program of education by an eligible veteran or eligible person only if—

"(1) the veteran or person accepts educational or vocational counseling services referred to in section 1663 of this title; and

"(2) the Secretary determines, on the basis of the results of the educational or vocational counseling, that the change is suited to the veteran's or person's aptitudes, interests, and abilities.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on August 1, 1991.

TITLE IV—HOUSING

SEC. 401. PERMANENT EXTENSION OF FINANCIAL INFORMATION AND COUNSELING ASSISTANCE FOR CERTAIN VETERANS WITH GUARANTEED LOANS.

Section 1832(a)(4) is amended by striking out subparagraph (C).

SEC. 402. SALE OF VENDEE LOANS.

Subparagraph (A) of section 1833(a)(3) is amended by striking out "Before October 1, 1990," and inserting in lieu thereof "Subject to subparagraph (C) of this paragraph,".

SEC. 403. EXTENSION OF LENDER REVIEW OF APPRAISALS.

Section 1831(f)(3) is amended by striking out "1990" and inserting in lieu thereof "1992".

SEC. 404. DEFAULT PROCEDURES AND PROPERTY MANAGEMENT.

(a) REPEAL OF TERMINATION DATE ON CERTAIN DEFAULT PROCEDURES.—Section 1832(c) is amended by striking out paragraph (11).

(b) REPEAL OF TERMINATION DATE ON CERTAIN PROPERTY MANAGEMENT PROCEDURES.—Section 1833(a) is amended—

(1) by striking out paragraph (6); and

(2) by redesignating paragraph (7) as paragraph (6).

SEC. 405. EXEMPTION FROM LOBBYING REPORTING REQUIREMENTS.

IN GENERAL.—Chapter 37 is amended by inserting after section 1821 the following new section:

"§ 1822. Exemption from lobbying reporting requirements

"An application for or the obtaining of a loan guaranteed, insured, or made under this chapter shall not be considered as a request for or the receipt of a Federal contract, grant, loan, loan guaranty, loan insurance, or cooperative agreement for purposes of any other law that requires persons requesting or receiving a Federal contract, grant, loan, loan guaranty, loan insurance, or cooperative agreement to report or declare payments made to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1821 the following new item:

"1822. Exemption from lobbying reporting requirements.".

SEC. 406. CERTIFICATES OF VETERAN STATUS FOR NATIONAL HOUSING ACT BENEFITS.

(a) IN GENERAL.—Chapter 37 is further amended by inserting after section 1834 the following new section:

"§ 1835. Certificates of veteran status under the National Housing Act

"The Secretary, at the request of the Secretary of Housing and Urban Development, shall certify to the Secretary of Housing and Urban Development whether an applicant for assistance under the National Housing Act or any other law administered by the Secretary of Housing and Urban Development is a veteran. The Secretary shall issue certifications under this section without charge.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1834 the following new item:

"1835. Certificates of veteran status under the National Housing Act.".

SEC. 407. WAIVER OF INDEBTEDNESS.

Section 3102 is amended—

(1) in subsection (a), by adding at the end the following new sentence: "The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application."; and

(2) in subsection (b)—

(A) by striking out "101 and 1801" and inserting in lieu thereof, "101, 1801, and 1802(a)(2)(C)(ii) of this title"; and

(B) by adding at the end the following: "An application for relief under this subsection must be made within one year after the date on which the Secretary notifies the payee of the indebtedness. The Secretary shall include in the notification a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.".

TITLE V—INSURANCE

SEC. 501. SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS.

(a) In General.—Subchapter I of chapter 19 is amended by inserting after section 722 the following new section:

"§ 722A. Supplemental service disabled veterans' insurance for totally disabled veterans

"(a) Any person insured under section 722(a) of this title who qualifies for a waiver of premiums under section 712 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed $10,000.

"(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance not later than the end of (1) the one-year period beginning on the first day of the first month following the month in which this section is enacted, or (2) the one-year period beginning on the date that the Department notifies the person that the person is entitled to a waiver of premiums under section 712 of this title.

"(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 722(a) of this title, except that such insurance may not be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

"(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.".

(b) Clerical Amendment.—The table of sections at the beginning of chapter 19 is amended by inserting after the item relating to section 722 the following new item:

"722A. Supplemental service disabled veterans' insurance for totally disabled veterans.".

SEC. 502. INCREASE IN AMOUNT OF VETERANS' MORTGAGE LIFE INSURANCE.

Section 806(b) is amended in the first sentence—

(1) by striking out "initial"; and

(2) by striking out "$40,000" and inserting in lieu thereof "$90,000".

TITLE VI—MINORITY AFFAIRS

SEC. 601. ASSIGNMENT OF MINORITY ISSUES TO AN ASSISTANT SECRETARY OF VETERANS AFFAIRS.

(a) Position and Functions of Assistant Secretary.—Section 4 of the Department of Veterans Affairs Act (Public Law 100-527; 102 Stat. 2638) is amended by adding at the end of subsection (b) the following new paragraph:

"(11) The review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the coordination and monitoring of policies facilitating access of such veterans to services and benefits provided under laws administered by the Secretary.".

(b) "Minority Veterans" Defined.—Section 4 of such Act is further amended by adding at the end the following new subsection:

"(g) Definitions.—As used in this section:

"(1) The term 'minority veterans' means veterans who are—

"(A) black individuals;
"(B) Native Americans;
"(C) Hispanic-Americans;
"(D) Asian-Americans;
"(E) Pacific-Islander-Americans; and
"(F) women.

"(2) The term 'veteran' has the meaning given that term in section 101(2) of title 38, United States Code.

"(3) The term 'Native American' means an Indian, a Native Hawaiian, or an Alaska Native.

"(4) The term 'Indian' has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a)).

"(5) The term 'Native Hawaiian' has the meaning given that term in section 815(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

"(6) The term 'Alaska Native' has the meaning given the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

"(7) The term 'Asian-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent of Asia.

"(8) The term 'Pacific-Islander-American' means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Pacific Islands.".

SEC. 602. REESTABLISHMENT OF THE ADVISORY COMMITTEE ON NATIVE AMERICAN VETERANS.

(a) **Establishment.**—Effective October 1, 1990, the Advisory Committee on Native-American Veterans established by section 19032 of the Veterans' Health-Care Amendments of 1986 (title XIX of Public Law 99-272; 100 Stat. 388) is reestablished.

(b) **Incorporation of Provisions of Prior Law.**—Subsections (b) through (e) and (g) of section 19032 of the Veterans' Health-Care Amendments of 1986 shall apply to the Advisory Committee on Native-American Veterans reestablished by subsection (a).

(c) **Reports.**—(1) Not later than March 31, 1991, and March 31, 1992, the Committee shall submit to the Secretary of Veterans Affairs a report containing the findings and any recommendations of the Committee regarding the matters described in section 19032(b) of the Veterans' Health-Care Amendments of 1986, and the matters described in section 603 of this Act, that were examined and evaluated by the Committee during the fiscal year preceding the fiscal year in which the report is submitted.

(2) Not later than 60 days after receiving each such report, the Secretary shall transmit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comments and recommendations concerning the report that the Secretary considers appropriate.

(d) **Termination.**—The Committee shall expire 90 days after the date on which the second report is transmitted by the Committee pursuant to subsection (c).

TITLE VII—MISCELLANEOUS

SEC. 701. NATIONAL CEMETERIES.

(a) **Definition of Minor Child.**—Section 1002(5) is amended by adding at the end the following new sentence: "For purposes of this paragraph, the term 'minor child' includes a child under 21 years of age or under 23 years of age if the person is pursuing a course of instruction at an educational institution".

(b) **Florida National Cemetery.**—Notwithstanding section 1004(c)(2) the Secretary of Veterans Affairs may provide for flat grave markets in that section of the Florida National Cemetery in which, as of July 29, 1988, preplaced graveliners had been installed.

SEC. 702. CLARIFICATION OF PROHIBITION ON PAYMENT OF ATTORNEYS' FEES.

(a) **In General.**—Section 3404(c) is amended—

(A) by inserting "(A)" after "(c)(1)";

(B) by redesignating paragraph (2) as subparagraph (B);

(C) in subparagraph (B) (as redesignated by clause (B)), by striking out "paragraph (1)" and inserting in lieu thereof "subparagraph (A)"; and

(D) by adding at the end the following new paragraph:

"(2) The provisions of this subsection shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department of Veterans Affairs, and such provisions shall not apply in cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fees statutes apply.".

(b) **Application of Prohibition.**—Section 3404(c) of title 38, United States Code, as in effect on November 17, 1988, shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department of Veterans Affairs, and shall not apply with respect to cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fees statutes apply.

SEC. 703. MODIFICATION OF ADMINISTRATIVE REORGANIZATION REQUIREMENTS.

Section 210(b)(2) is amended—

(1) in subparagraph (A), by striking out the second sentence and inserting in lieu thereof the following: "Any such report shall be submitted not later than April 1 of the year preceding the fiscal year in which the administrative reorganization is to be implemented.";

(2) by redesignating subparagraph (D) as subparagraph (E);

(3) by inserting after subparagraph (C) the following new subparagraph (D);

"(D) Subparagraphs (A), (B), and (C) shall not apply to any administrative reorganization at a Department of Veterans Affairs medical and regional office center if there is no reduction in the number of full-time equivalent employees employed at that center below the number of such employees employed at that center in the fiscal year immediately preceding the fiscal year in which the administrative reogranization is to be implemented."; and

(4) in clause (E), as redesignated by paragraph (2), strike out clause (iii) and insert in lieu thereof the following:

"(iii) The term 'covered field office or facility' means a Department of Veterans Affairs office or facility outside the Department of Veterans Affairs Central Office that is the permanent duty station for 25 or more employees and that is a regional office, medical center, medical and regional office center, freestanding outpatient clinic, insurance center, or similar field office or facility which has as its primary mission providing care or services to veterans.".

SEC. 704. ENHANCED-USE LEASES AND SPECIAL DISPOSITION OF PROPERTY.

(a) Amendment to Chapter 81.—Chapter 81 of title 38, United States Code, is amended by adding at the end the following new subchapter:

"SUBCHAPTER V—SPECIAL LEASES OF REAL PROPERTY

"§ 5061. Definitions

"For the purposes of this subchapter:

"(1) The term 'enhanced-use lease' means a written agreement for the lease of designated property at a Department facility for a use that (A) will, at least in part, contribute in a cost-effective manner to the mission of the Department, and (B) will be consistent with and not adversely affect that mission.

"(2) The term 'designated property' means any real property under the jurisdiction or control of the Secretary and identified by the Secretary in a notice of designation.

"(3) The term 'notice of designation' means a written notice by the Secretary to the Committees identifying designated property with respect to which the Secretary proposes to enter into a enhanced-use lease.

"(4) The term 'Committees' means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

"§ 5062. Enhanced-use leases

"(a)(1)(A) Notwithstanding section 5022 of this title, section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 and 484), and any other provision of law inconsistent with this section, the Secretary may enter into enhanced-use leases with respect to any designated property and may dispose of such property in accordance with section 5064 of this title.

"(B) The Secretary may enter into an enhanced-use lease under this subchapter only if the Secretary determines that the proposed lease—

"(i) will provide, at least in part, a cost-effective means of carrying out or providing appropriate space for an activity contributing to the mission of the Department; and

"(ii) will be consistent with and not adversely affect the mission of the Department.

"(2) The provisions of the Act of March 3, 1931 (46 Stat. 1494; 40 U.S.C. 276a et seq.), section 421 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 552), Federal laws relating to environmental and historic preservation, and title 31, United States Code, shall not, by virtue of this section, become inapplicable to a designated property.

"(3) A designated property shall not be considered unutilized or underutilized for purposes of section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

"(b)(1) The selection of a lessee under an enhanced-use lease shall be made pursuant to competitive procedures prescribed, after consultation with the Administrator of General Services, by the Secretary.

"(2) The term of an enhanced-use lease may not exceed—

"(A) 35 years in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, as determined by the Secretary; or

"(B) 20 years in the case of a lease not described in subparagraph (A) of this paragraph.

"(3)(A) Each enhanced-use lease entered into under this subchapter shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in cash or in-kind, or a combination of the two.

"(B) Consideration in-kind may include goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

"(4)(A) In determining whether the consideration provided for in an enhanced-use lease is fair consideration, the Secretary shall take into account the value of any goods or services to be provided by the Federal Government to or for the benefit of the lessee.

"(B) Any authority for the Secretary to make a cash payment to the lessee under an enhanced-use lease shall be provided for in advance in an appropriation Act.

"(c)(1) Subject to paragraph (2) of this subsection, a designation by the Secretary of any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 552) as a designated property shall be considered to be a prohibited action under that section to dispose of the land or improvement.

"(2) A designation by the Secretary of any land or improvement described in such section 421(b)(2) for an enhanced-use lease shall not be considered to be a prohibited action under that section if, under the lease—

"(A) the designated property may be used solely for child-care services;

"(B) such services must be provided exclusively for the benefit of employees of the Department, individuals employed on the premises of such land, and employees of a health-personnel educational institution that is affiliated with a Department facility;

"(C) the majority of the employees benefited by such services must be employed by the Department; and

"(D) the majority of the children served must be the children of employees of the Department.

"§ 5063. Requirements relating to designation of a property

"(a) Before the Secretary designates a property for an enhanced-use lease, the Secretary shall conduct, in the local community in which the property is located, a public hearing to receive the views of veterans service organizations, local commercial enterprises, and other interested parties regarding the proposed lease and the possible effects of the lease, including the effects of the lease—

"(1) on local commerce and other aspects of the local community;

"(2) on programs administered by the Department; and

"(3) on services to veterans in the local community.

"(b) Before conducting any public hearing referred to in paragraph (1) of this subsection, the Secretary shall provide veterans, residents, and businesses in the local community with reasonable notice of the proposed lease, including—

"(1) the time and place of the hearing;

"(2) identification of the property proposed to be leased;

"(3) a description of the proposed uses of the property;

"(4) a description of the proposed lease, and

"(5) a description of how the proposed lease—

"(A) will contribute cost-effectively to, be consistent with, and not adversely affect the mission of the Department; and

"(B) will affect services to veterans.

"(c)(1) If, following the conduct of a hearing under subsection (b) of this section, the Secretary intends to designate the property involved, the Secretary shall notify the Committees of the Secretary's intention to designate the property, and shall publish a notice of such intention in the Federal Register.

"(2) An enhanced-use lease may not be entered into with respect to any property unless the notice required under paragraph (1) of this subsection is provided to the Committees and published in the Federal Register—

"(A) at least 90 days before the date on which the Secretary provides the Committees with notice of the designation of the property pursuant to paragraph (4) of this subsection if the notice is submitted to the Committees during the period beginning January 1 and ending March 31; or

"(B) at least 180 days before such date if the notice is submitted to the Committees during the period beginning April 1 and ending December 31.

"(3) Each notice of intention to designate shall include the following:

"(A) Identification of the property involved.

"(B) An explanation of the background, rationale, and economic factors in support of the proposed lease.

"(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation together with a summary of the Secretary's response to those views.

"(D) A general description of the proposed lease.

"(E) A description of how the proposed lease—

"(i) will contribute cost-effectively to, be consistent with, and not adversely affect the mission of the Department; and

"(ii) will affect services to veterans.

"(4) Not less than 30 days before entering into an enhanced-use lease, the Secretary shall provide the Committees a report thereon containing (A) updated information with respect to the matters described in paragraph (3) of this subsection, (B) a summary of a cost-benefit analysis of the proposed lease, (C) a description of the provisions of the proposed lease, and (D) a notice of the designation of the property.

"(5) Not less than 10 days before entering into an enhanced-use lease, the Secretary should provide the Committees with copies of the proposed lease.

"§ 5064. Special dispositions of leased properties

"(a) If, during the term of an enhanced-use lease or within 30 days after the expiration of the term of the lease, the Secretary determines that the leased property is not needed by the Department in the discharge of its responsibilities, the Secretary may initiate action for the disposal of leased property to the lessee by requesting the Administrator of General Services to carry out a special disposition of the property pursuant to subsection (b) of this section. The Administrator, upon request of the Secretary, shall take appropriate action under this title to dispose of property of the Department that is or has been subject to an enhanced-use lease.

"(b) A special disposition under this section may be made for cash or such other consideration as the Secretary and the Administrator of General Services jointly determine is in the best interest of the United States and upon such other terms and conditions as the Administrator considers appropriate. In carrying out a special disposition of property under this section, the Administrator may utilize any other authority available to the Administrator under any other provision of law.

"(c) Not less than 90 days before a special disposition of property is made under this section, the Secretary shall notify the Committees of the Secretary's intent to dispose of the property and publish notice of the proposed disposition in the Federal Register. The notice shall describe the background, rationale, and economic factors in support of the proposed special disposition (including a cost-benefit analysis summary), the intended consideration, and the method, terms, and conditions of the proposed disposition.

"§ 5065. Disposition of proceeds

"Funds received by the Department under an enhanced-use lease or from a special disposition of leased property shall be deposited in the nursing home revolving fund established under section 5016 of this title and shall be administered as part of that fund. An amount sufficient to pay for any expenses incurred by the Secretary in connection with any enhanced-use lease entered into by the Secretary under this subchapter shall be deducted from the proceeds of the lease and used by the Secretary to reimburse the account from which the funds were used to pay such expenses, and an amount sufficient to pay any expenses incurred by the Administrator of General Services in connection with the special disposition of any property shall be deducted from the proceeds of the sale and used by the Administrator to reimburse the account from which funds were used to pay such expenses.

"§ 5066. Construction standards

"Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or improvement of any property that is the subject of an enhanced-use lease shall comply with all standards applicable to construction of Federal buildings, but shall not be subject to any State or local law relating to building codes, permits, or inspections. When Federal construction standards are applicable to such property, the Secretary shall conduct periodic inspections of the construction for the purpose of ensuring that the standards are met.

"§ 5067. Exemption from state and local taxes

"The Department's interest in any enhanced-use lease and in any property subject to such an agreement shall not be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessments, or special assessments, except sales taxes associated with the construction, alteration, repair, remodeling, or improvement carried out under this title.

"§ 5068. Limitations on number of agreements

"(a) Not more than 30 enhanced-use leases may be entered into under this title and not more than 10 such leases may be entered into in any fiscal year.

"(b) A lease entered into by the Secretary shall not be considered an enhanced-use lease for the purposes of the limitations provided in subsection (a) of this section if the primary use made of the leased premises is the provision of child-care services for employees of the Department.

"§ 5069. Expiration

"No enhanced-use lease may be entered into under this subchapter after September 30, 1994.".

(b) CLERICAL AMENDMENTS.—(1) The chapter heading for chapter 81 of such title is amended by adding at the end the following: "; SPECIAL LEASES OF REAL PROPERTY".

(2) The table of chapters at the beginning of such title and at the beginning of part VI of such title are each amended by striking out the period at the end of the item relating to chapter 81 and inserting in lieu thereof the following: "; Special Leases of Real Property.".

(3) The table of sections at the beginning of chapter 81 of such title is amended by adding at the end the following:

"SUBCHAPTER V—SPECIAL LEASES OF REAL PROPERTY

"Sec.
"5061. Definitions.
"5062. Enhanced-use leases.
"5063. Requirements relating to designation of a property.
"5064. Special dispositions of leased properties.
"5065. Disposition of proceeds.
"5066. Construction standards.
"5067. Exemption from state and local taxes.
"5068. Limitations on number of agreements.
"5069. Expiration.".

SEC. 705. COURT OF VETERANS APPEALS.

Section 4064 of title 38, United States Code, is amended by adding at the end the following:

"(c) Section 455 of title 28 shall apply to judges and proceedings of the United States Court of Veterans Appeals.".

SEC. 706. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS' MEDICAL CARE ACCOUNT UNDER SEQUESTRATION.

Section 113(b) of title 38, United States Code, is amended by adding at the end the following:

> "(3) Notwithstanding any other provision of law, the following appropriation account: Veterans Health Services and Research Administration, Medical Care (36-0160-0-1—703), including administrative expenses incurred by the Department.".

SEC. 707. TECHNICAL CORRECTIONS.

(a) AMENDMENTS TO CHAPTER 30.—(1) Section 1418(b)(4) is amended—

(A) by striking out the comma after "service" and inserting in lieu thereof "(i)"; and

(B) by inserting ", or (ii) has successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree" before the semicolon.

(2) Section 1432(f)(3) is amended by striking out "or (c)" and inserting in lieu thereof "(c), or (d)(1)".

(3) Section 1433(b) is amended by striking out "section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note)," and inserting in lieu thereof "chapter 109 of title 10".

(b) AMENDMENTS TO CHAPTER 32.—Section 1685(a)(1) is amended—

(1) by redesignating clauses (1) through (5) as clauses (A) through (E), respectively; and

(2) in clause (E), as so redesignated, by inserting ", Coast Guard, or National Guard" after "Department of Defense".

(c) AMENDMENTS TO CHAPTER 36.—Chapter 36 is amended —

(1) in sections 1732(c)(3), 1732(e), and 1733(a)(1), by striking out "Secretary of Veterans Affairs" and inserting in lieu thereof "Secretary"; and

(2) in section 1774(a)(1), striking out "chapters 106 and 107" and inserting in lieu thereof "chapter 106".

(d) HOME LOAN PROGRAM.—(1) Section 1803(a)(1)(A)(i) is amended—

(A) in subclause (III)—

(i) by inserting "except as provided in subclause (IV) of this clause," after "(III)"; and

(ii) by striking out "but not more than $144,000,"; and

(B) in subclause (IV), by striking out "or (6)" and inserting in lieu thereof "(6), or (8)";

(2) Section 1805(a) is amended by striking out "approved" each place it appears and inserting in lieu thereof "appraised".

(3) Any actions of the Secretary of Veterans Affairs in carrying out the provisions of section 1829 of title 38, United States Code, by contract or otherwise, with respect to loans closed during the period beginning on December 1, 1989, and ending on the date of the enactment of the Veterans' Benefits Amendments of 1989 (Public Law 101-237) are hereby ratified.

(e) ADJUDICATIONS AND APPEALS.—(1) The heading of section 3004 is amended to read as follows:

"§ 3004. Notice of decisions".

(2) The the table of sections at the beginning of chapter 51 is amended by striking out the item relating to section 3004 and inserting in lieu thereof the following:

"3004. Notice of decisions.".

(3) The chapter heading of chapter 71 is amended to read as follows:

"CHAPTER 71—BOARD OF VETERANS APPEALS".

(4) The table of sections at the beginning of chapter 71 is amended by striking out the item relating to section 4001 and inserting in lieu thereof the following:

"4001. Composition of Board of Veterans Appeals.".

(5) The heading of section 4001 is amended to read as follows:

"§ 4001. Composition of Board of Veterans Appeals".

(6) The text of chapters 71 and 72 is amended—

(A) by striking out "Board of Veterans' Appeals" each place it appears and inserting in lieu thereof "Board of Veterans Appeals";

(B) by striking out "Veterans' Administration" each place it appears and inserting in lieu thereof "Department"; and

(C) by striking out "Administrator" each place it appears and inserting in lieu thereof "Secretary".

SEC. 708. SUSPENSIONS OF PAYMENT OF PENSION TO INSTITUTIONALIZED VETERANS RECEIVING PENSION.

(a) DURATION OF INSTITUTIONALIZATION.—Section 3203(a)(1) is amended—

(1) in subparagraph (A), by striking out "third" and inserting in lieu thereof "twelfth"; and

(2) in subparagraph (B), by striking out "third" and inserting in lieu thereof "twelfth".

(b) PAYMENT OF WITHHELD AMOUNTS.—Section 3203(a)(1) is further amended by adding at the end the following new subparagraph:

"(E) Upon the discharge of a veteran from domiciliary care or nursing home care furnished by the Department, the veteran shall be paid a lump sum equal to the amount the veteran would have been paid except for subparagraph (A), (B), or (C), as the case may be, of this paragraph. Under regulations prescribed by the Secretary, so much of such amount may be paid to the veteran before the veteran is discharged from such care as is necessary to enable the veteran to make living arrangements in a location or facility other than a Department facility. In no event may the amount paid to the veteran under this subparagraph exceed $10,000.".

(c) ESTATE LIMITATION.—(1) Section 3203(b)(1)(A) is amended—

(A) by striking out "$1,500" and inserting in lieu thereof "$6,000"; and

(B) by striking out "$500" and inserting in lieu thereof "$2,000".

(d) EFFECTIVE DATES.—(1) The amendments made by subsections (a) and (b) shall take effect with respect to veterans who are being furnished care by the Department of Veterans Affairs on or after (1) the first day of the first month that begins after the date of enactment of this Act, or (2) October 1, 1990, whichever is later.

(2) The amendments made by subsection (c) shall take effect with respect to veterans who are so being furnished care on or after March 1, 1991.

SEC. 709. SECURITY SERVICES.

(a) Security and Law Enforcement Functions.—Section 218 is amended by adding at the end the following new subsection:

"(f) The Secretary may not delegate the functional and technical supervision of the performance of security and law enforcement functions under this section to any official outside the Office of the Secretary.".

(b) Report on Security and Law Enforcement Matters.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

(1) the Secretary's plan for improving the training, recruitment, retention, and pay of security and law enforcement personnel of the Department of Veterans Affairs; and

(2) the Secretary's assessment of—

(A) the need, after considering potential alternatives, for establishing a policy on the issuance of weapons to such personnel assigned to medical centers of the Department located in high-crime areas and the use of weapons by such personnel;

(B) various options available to the Secretary for providing improved protection for such personnel assigned to medical centers referred to in subclause (A);

(C) various options available to the Secretary for providing improved protection for such personnel assigned to medical centers of the Department not located in high-crime areas;

(D) the adequacy of the number and deployment of security and law enforcement personnel at each of the Department medical centers.

SEC. 710. USE OF INTERNAL REVENUE SERVICE AND SOCIAL SECURITY ADMINISTRATION DATA FOR INCOME VERIFICATION.

(a) Disclosure of Return Information.—Paragraph (7)(D) of section 6103(l) of the Internal Revenue Code of 1986 is amended—

(1) by striking out "and" at the end of clause (vi);

(2) by striking out the period at the end of clause (vii) and inserting in lieu thereof "; and";

(3) by adding at the end the following new clause:

"(viii)(I) any needs-based pension provided under chapter 15 of title 38, United States Code, or any other law administered by the Department of Veterans Affairs;

"(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

"(III) health-care services furnished under sections 610(a) (1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, United States Code; and

"(IV) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total; except that, in such cases, only wage and self-employment information may be disclosed."; and

(4) by inserting before the period at the end of the heading "**or to the Department of Veterans Affairs**".

(b) Protection Against Improper Use of Return Information.—(1) Chapter 53 of title 38, United States Code, is amended by adding at the end the following new section:

"§ 3117. Protection of benefit applicants and recipients from improper use of certain information

"(a)(1) In order to protect applicants for and recipients of the benefits and services described in paragraph (2) of this subsection from the improper use of information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)(viii)), the Secretary may not terminate, deny, suspend, or reduce any such benefits or services of an individual until the Secretary has complied with the requirements in section 1137(c) of the Social Security Act (42 U.S.C. 1320b-7(c)), and such requirements shall be fully applicable in the case of such benefits and services.

"(2) The benefits and services described in this paragraph are—

"(A) needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Department of Veterans Affairs;

"(B) parents' dependency and indemnity compensation provided under section 415 of this title;

"(C) health-care services furnished under sections 610(a) (1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of this title; and

"(D) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total.

"(b) In the case of compensation described in subsection (a)(2)(D) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment data referred to in subsection (a) of this section only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3116 the following new item:

"3117. Protection of benefit applicants and recipients from improper use of certain information.".

(c) INITIAL NOTIFICATION OF INCOME VERIFICATION.—Not later than 90 days after the date of the enactment of this Act and prior to obtaining information from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986, the Secretary of Veterans Affairs shall notify applicants for and recipients of the benefits described in subsection (a)(2) (A), (B), and (D) of section 3117 of title 38, United States Code (as added by subsection (b)), that income information furnished by such applicants and recipients may be compared with information obtained from the Commissioner of Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986. Thereafter, the Secretary shall notify all new applicants for such benefits and for services described under subsection (a)(2)(C) of such section 3117 that income information furnished by them may be so compared and shall periodically renotify all recipients of such benefits and services.

(d) PAYMENT OF ADMINISTRATIVE COSTS.—The costs incurred by the Secretary in obtaining, verifying, and using information disclosed pursuant to the amendments made by subsection (a) shall be paid for out of the Department of Veterans Affairs compensation and pension account, and amounts collected as a result of such actions shall be paid into such account.

SEC. 711. EXPANSION OF SELECTION COMMISSIONS.

Section 3 of the Department of Veterans Affairs Act (Public Law 100-527; 102 Stat. 2635) is amended—

(1) in subsection (b)(2)(B)—

(A) by striking out "Two" in clause (ii) and inserting in lieu thereof "Four"; and

(B) by adding at the end the following new clause:

"(vii) one person, selected by the Secretary in the Secretary's discretion, from among persons in categories described in clauses (i), (ii), (iii), and (vi)."; and

(2) in subsection (c)(2)(B)—

(A) by striking out "Two" in clause (ii) and inserting in lieu thereof "Four"; and

(B) by adding at the end the following new clause:

"(vii) one person, selected by the Secretary at the Secretary's discretion, from among persons in categories described in clauses (i), (ii), (iii), and (vi).".

Amend the title so as to read:

A bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans; to amend title 38, United States Code, to improve veterans' compensation, health-care, education, housing, and insurance programs; and for other purposes.

INTRODUCTION

BILLS

On January 25, 1989, S. 13 was introduced by the Chairman of the Committee, Senator Alan Cranston. Joining later as cosponsors were Committee Members Dennis DeConcini, John D. Rockefeller IV, George J. Mitchell, Bob Graham, and the late Spark M. Matsunaga, and Senators Quentin N. Burdick, John F. Kerry, and Jeff Bingaman. As introduced, S. 13 would have increased the rates of disability compensation for veterans with service-connected disabilities and dependency and indemnity compensation for the survivors of certain disabled veterans; increased the allowances paid to disabled veterans pursuing programs of rehabilitation; and improved various programs of benefits and healthcare services for veterans. S. 13 was reported by the Committee on September 13, 1989, with an amendment in the nature of a substitute (S. Rept. No. 101-126) incorporating provisions from S. 13 as introduced and 29 other measures. On October 3, 1989, the Senate substituted the text of S. 13 as reported and further amended for the text of H.R. 901 and passed H.R. 901 as so amended. H.R. 901, as amended to incorporate a compromise agreement between the Committees on Veterans' Affairs of the House of Representatives and the Senate, which incorporated only certain provisions of H.R. 901 as passed by the Senate, was passed by both Houses on November 26, 1989, and signed into law on December 18, 1989 (Public Law 101-237).

On February 7, 1990, S. 2100 was introduced by Chairman Cranston and cosponsored by the Committee's Ranking Minority Member, Senator Frank H. Murkowski, and Committee Members DeConcini, Mitchell, Rockefeller, Graham, Strom Thurmond, Arlen Specter, James Jeffords and the late Spark Matsunaga. Joining later as cosponsors were Committee Member Akaka and Senators Mitch McConnell, J. Bennett Johnston, and Richard C. Shelby. As introduced, S. 2100 would have increased the rates of compensation for veterans with service-connected disabilities and the rates of dependency indemnity compensation for the survivors of certain disabled veterans; otherwise improved veterans' compensation, healthcare, insurance, and housing programs; and provided for transitional group residences for veterans recovering from substance-abuse disabilities.

On February 7, 1990, S. 2102 was introduced by Chairman Cranston at the request of the Administration. S. 2102 would modify the "report and wait" restrictions which are imposed upon certain Department of Veterans Affairs (VA) administrative reorganizations by section 210(b)(2) of title 38.

On February 8, 1990, S. 2128 was introduced by Senator John F. Kerry. Joining later as cosponsors were Committee Members Rockefeller, Graham, and Akaka, and Senators Paul Simon, Edward M. Kennedy, and Bill Bradley. S. 2128 would direct the Secretary of Veterans Affairs to establish and maintain a comprehensive services program for homeless veterans.

On April 19, 1990, S. 2454 was introduced by Chairman Cranston at the request of the Administration. S. 2454 would increase the estate limits for certain incompetent institutionalized veterans receiving needs-based VA pension.

On April 19, 1990, S. 2456 was introduced by Chairman Cranston at the request of the Administration. S. 2456 would extend expiring authorities for VA to contract for certain health-care services and revise VA's authority to furnish outpatient dental care.

On April 20, 1990, S. 2482 was introduced by Chairman Cranston at the request of the Administration. S. 2482 would (1) clarify the eligibility of certain minors for burial in national cemeteries; and (2) authorize use of flat grave markers in a section of Florida National Cemetery.

On April 20, 1990, S. 2483 was introduced by Chairman Cranston at the request of the Administration. S. 2483 would make various revisions in the educational assistance programs for veterans and eligible persons.

On April 20, 1990, S. 2484 was introduced by Chairman Cranston at the request of the Administration. S. 2484 would make various revisions in the VA home-loan guaranty program.

On April 27, 1990, S. 2537 was introduced by Senator Thomas A. Daschle and cosponsored by Chairman Cranston and Senators Simon, Wendell H. Ford, and John Glenn. S. 2537 would authorize the pursuit of flight training under chapter 32 of title 38.

On April 30, 1990, S. 2542 was introduced by Ranking Minority Member Murkowski. S. 2542 would establish a program to provide, in return for agreements for subsequent service in VA, additional post-secondary educational assistance to students in health professions who are eligible for educational assistance under the Montgomery GI Bill program for reservists.

On May 1, 1990, S. 2556 was introduced by Chairman Cranston and cosponsored by Committee Members DeConcini, Mitchell, Rockefeller, Graham, and Jeffords. Joining later as cosponsors were Committee Member Akaka and Senators Simon, Daschle, Bingaman, and Orrin G. Hatch. S. 2556 would expand the list of diseases prsumed to be service-connected in the case of veterans who were exposed to radiation from a nuclear detonation; eliminate the requirement that the listed diseases become manifest within certain time periods; and require that the Secretary of Veterans Affairs consider creation of similar presumptions for veterans who were exposed to radiation from another activity.

On May 11, 1990, S. 2615 was introduced by Chairman Cranston and cosponsored by Committee Member Rockefeller. Ranking Minority Member Murkowski later joined as a cosponsor. S. 2615 would clarify that the prohibition on the payment of attorneys' fees in connection with VA benefits proceedings applies only where the individual is applying for benefits.

On May 24, 1990, S. 2701 was introduced by Chairman Cranston. Committee Member Akaka later jointed as a cosponsor. S. 2701 would improve VA's ability to recruit and retain physicians and dentists by making increases in, and modifications of, its special-pay authorities.

On May 2, 1990, Amendment No. 1575 to S. 2100 was submitted by Chairman Cranston and Cosponsored by Committee Members Graham, DeConcini, and Thurmond. Amendment No. 1575 would authorize the Secretary of Labor, under certain circumstances, to expand the pilot program of employment and training information to members nearing separation from the Armed Forces.

On June 12, 1990, Amemdment No. 2019 to S. 2100 was submitted by Chairman Cranston. Amendment No. 2019 would authorize the Secretary of Veterans Affairs, under certain circumstances, to enter into long-term leases (referred to as "enhanced-use leases") of VA property, accept in-kind consideration in addition to or in lieu of cash payments under the lease, and provide for the special disposition of property so leased.

On October 2, 1989, H.R. 1358 was passed by the House of Representatives. As passed, H.R. 1358 would make various revisions in VA educational assistance programs.

On May 1, 1990, H.R. 4557 was passed by the House of Representatives. As passed, H.R. 4557 would make various revisions in Va health-care personnel authorities and make VA's Medical Care account exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985.

HEARINGS

On May 11, 1990, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on veterans' employment, education, and housing legislation—sections 401 and 404(c) of S. 2100, S. 2483, S. 2484, S. 2537, S. 2546, Amendment No. 1562 (to S. 2532), and Amendment No. 1575 (to S. 2100). Testimony was received form VA Deputy Chief Benefits Director for Field Operations Raymond H. Avent; Assistant Secretary of Labor for Veterans' Employment and Training Thomas E. Collins, III; Lt. Gen. Donald W. Jones, Deputy Assistant Secretary of Defense for Military Manpower and Personnel Policy; and representatives of The American Legion, The Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, and the Non Commissioned Officers Association. Testimony was also submitted for the record of the hearing by AMVETS, the Vietnam Veterans of America, the Association of the United States Army, the National Association of Veterans Program Administrators, the National Association of State Approving Agencies, Inc., the Mortgage Bankers Association of America, the Aircraft Owners and Pilots Association, the Interstate Conference of Employment Security Agencies, Inc., the Manufactured Housing Institute, and the California Association of Realtors.

On May 18, 1990, the Committee held a hearing, chaired by Chairman Cranston, to receive testimony on compensation, pension, insurance, national cemeteries, and administrative reorganization legislation—titles I and III of S. 2100, S. 2556, S. 2615, S. 1887, S. 2454, S. 2499, S. 2102, and S. 2482—and a General Accounting Office program audit concerning avoidance of erroneous benefits payments through the use of Social Security Administration information on deaths. Testimony was received from Deputy Secretary of Veterans Affairs Anthony J. Principi; Mr. Gregory J. McDonald, Associate Director for Income Security Issues, General Accounting Office; representatives of the American Legion, the Veaterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Vietnam Veterans of America, the Gold Star Wives of America, the National Association of Radiation Survivors, the National Assocation of Atomic Veterans, and the National Committee for Radiation Victims; and Bruce S. Ceming, Esq., Van Ness, Feldman & Curtis, P.C. Testimony was also submitted for the record of the hearing by Senator McConnell, AMVETS, and the Veterans Education Project, Inc.

On June 14, 1990, the Committee held a hearing, chaired by Chairman Cranston, to recieve testimony on health-care legislationa—title II and section 402 of S. 2100, S. 2701, Amendment No. 2019 to S. 2100, titles I and III and section 401 of H.R. 4557, S. 1860, S. 2455, S. 2456, S. 2532, S. 2542, and S. 2557. Testimony was received from Senator David Boren; VA Acting Chief Medical Director Dr. Arthur J. Lewis; representatives of the American Psychiatric Association, the National Association of VA Chiefs of Psychiatry, the National Association of VA Chiefs of Staff, the National Association of VA Physicians and Dentists, the Association of American Medical Colleges, the American Federation of Government Employees (AFL-CIO), the National Federation of Federal Employees, the American Nurses Association, The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, the Paralyzed Veterans of America, the Vietnam Veterans of America, the American Ex-Prisoners of War; and Mr. J. Paul Molloy, Chief Executive Officer, Oxford House, Inc. Testimony was also submitted for the record of the hearing by the American Association of Dental Schools and the Association of Professors of Medicine.

COMMITTEE MEETING

After carefully reviewing the testimony from the foregoing hearings, the Committee met in open session on June 28, 1990, and voted by voice vote to report S. 2100 favorably to the Senate with an amendment in the nature of a substitute which incorporated provisions from all of the bills the introduction of which is noted above, as well as original proposals by Chairman Cranston and, as adopted at a July 12, continuation of the June 28 meeting, an amendment proposed by Ranking Minority Member Murkowski as modified by a compromise agreement between Senators Cranston and Murkowski.

SUMMARY OF S. 2100 AS REPORTED

TITLE I—COMPENSATION

Part A—Generally

Part A of this title contains freestanding provisions and amendments to title 38 that would:

1. Require the Secretary of Veterans Affairs to increase, effective December 1, 1990, the rates and limitations for compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) paid to certain service-connected-disabled veterans' survivors by the same percentage (estimated at this time by the Congressional Budget Office to be 4.5 percent) as that which will be provided to Social Security recipients and VA pension beneficiaries effective on that same date.

The basic increase would apply to:

(a) basic compensation rates for service-connected-disabled veterans and the rates payable for certain severe disabilities;

(b) the allowances for spouses, children, and dependent parents paid to service-connected-disabled veterans rated 30-percent or more disabled;

(c) the annual clothing allowance paid to veterans whose compensable disability requires the use of a prosthetic or orthopedic appliance (including a wheelchair) that tends to tear or wear out clothing or the use of medication prescribed by a physician for a service-connected skin condition if the medication causes irreparable damage to the veteran's outergarments; and

(d) the DIC rates paid to:

(i) surviving spouses of veterans whose deaths were service connected;

(ii) such surviving spouses for dependent children;

(iii) such surviving spouses who are so disabled as to be in need of aid and attendance or to be permanently housebound; and

(iv) the children of veterans whose deaths were service connected where no surviving spouse is entitled to DIC, the child is age 18 through 22 and attending an approved educational institution, or the child is age 18 or over and became permanently incapable of self-support prior to reaching age 18 (section 101).

2. Clarify that VA has authority to apply only to new claims a change in evaluation methods or standards of the VA disability rating schedule (section 102).

Part B—Radiogenic Disabilities

Part B of this title contains amendments to title 38 and to the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542) that would:

1. Expand the presumption of service connection for radiation-exposed veterans to cover reservists who were serving on active duty for training or inactive duty training during on-site participation in a nuclear weapons test (section 111).

2. Eliminate the requirements that, in order to be presumptively service connected for radiation-exposed veterans, the diseases listed in section 312(c) of title 38 become manifest within certain time periods and add to the list of presumptively service-connected diseases cancer of the salivary gland and cancer of the urinary tract (section 112).

3. (a) Require the Secretary, in consultation with the Secretary of Defense, to identify at least three military activities in each of the next four years that involved exposure to radiation, considering the number and level of exposure of the participants, but are not "radiation-risk activities" under section 312(c) of title 38; (b) require the VA Advisory Committee on Environmental Hazards to evaluate, and make recommendations concerning, whether the participation of veterans or categories of veterans in activities identified by the Secretary as involving exposure to radiation resulted in an oppor-

tunity for exposure comparable to exposure from radiation-risk activity as defined in current law, namely participation in the nuclear-weapons test program or the post-war occupation of Hiroshima or Nagasaki; (c) require the Secretary to list each identified radiation-risk activity, unless the Advisory Committee report and other credible scientific evidence demonstrate that participation did not result in exposure comparable to exposure from a radiation-risk activity; and (d) make all activities so listed by the Secretary subject to the scientific review, regulatory, and adjudication procedures of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542) (section 113).

Part C—Veterans' Agent Orange Exposure and Vietnam Service Benefits

This part contains freestanding provisions and amendments to chapters 11 and 17 of title 38 that would:

1. Establish presumptions that chloracne (becoming manifest within one year after a veteran's last service in Vietnam), non-Hodgkin's lymphoma (NHL), and soft-tissue sarcoma (STS) are connected to military service in Vietnam (section 122).
2. Make certain congressional findings regarding presumptions of service connection for diseases associated with exposure to dioxin and other chemical compounds in herbicides used in military operations (section 123(a)).
3. Create a mechanism pursuant to which VA must determine, based on an independent scientific review (as updated by biennial follow-up reviews) of all relevant evidence and on all other available scientific information, whether permanent presumptions for disability benefits should be accorded for diseases determined to have positive association with exposure to Agent Orange or other herbicides in Vietnam (section 123(b)).
4. Provide that the National Academy of Sciences (NAS) would conduct the scientific review referred to in the previous paragraph (unless NAS declines, in which case another independent, contract scientific organization would conduct the study) (section 123(b)).
5. Require VA to gather, analyze, and report annually to the Congressional Committees on Veterans' Affairs on data gathered from the record of Vietnam veterans who seek VA treatment for conditions they believe are related to exposure to Agent Orange or other herbicides in Vietnam (section 124).
6. Require VA to establish an archiving system to store voluntarily contributed blood and tissue samples from Vietnam veterans for use in future research (section 125).
7. Require VA to fund appropriate, independent studies designed to determine the feasibility of future scientific research on diseases or disabilities possibly related to exposure to Agent Orange or other herbicides or to health hazards related to Vietnam service (section 126).
8. Require the Secretary of Health and Human Services to submit, within 180 days after enactment, a report on research being conducted to identify and develop treatments for exposure to dioxin and other toxic agents similar to those in herbicides used in Vietnam (section 128).

9. Extend from September 30, 1990, to December 31, 1993, veterans' entitlement to, and eligibility for, VA health care based on exposure to Agent Orange in Vietnam or radiation from nuclear detonations (section 129).

10. Make technical changes in provisions of Public Law 100-687 that established VA outreach requirements related to Agent Orange (section 127).

11. Make technical changes in provisions in Public Law 100-687 that imposed certain reporting requirements for the Air Force's Ranch Hand Study (section 130).

TITLE II—HEALTH CARE

Part A—Mental Health

Part A of this title includes amendments to chapters 17 and 73 of title 38, United States Code, that would:

1. Require VA (a) to provide treatment for post-traumatic stress disorder (PTSD) once (1) a diagnosis of the PTSD related to the veteran's service in a combat theater has been made by a mental-health professional designated by the Chief Medical Director, and (2) the veteran's combat-theater service has been verified, with verification required by the most rapid means possible; and (b) accomplish an evaluation of a veteran within 7 days after the referral of the veteran to a VA medical center by a Vet Center (section 201).

2. Authorize VA to expand eligibility, currently provided to only Vietnam-era veterans, for readjustment counseling and follow-up mental health care to include veterans of service in theaters of operations of any prior periods of war and veterans of service in areas in which United States personnel were subjected to danger from armed conflict comparable to that of battle with any enemy during a period of war (section 202).

3. (a) Require the Secretary to designate not more than five VA health-care facilities as the locations for centers of mental illness research, education, and clinical activities (MIRECCs), with at least one to be designated by July 1, 1991; (b) provide that, to qualify for designation, a facility must maintain arrangements with an accredited medical school, graduate school of psychology, or nursing, social work, or other allied-health personnel school, under which residents or students would regularly rotate through the VA facility; and (c) authorize the appropriation of $3.125 million in fiscal year 1991 and $6.25 million for each of fiscal years 1992, 1993, and 1994 for MIRECCs (section 203).

4. Extend for 3 years the reporting requirements of VA's Special Committee on PTSD and require the reports to be submitted concurrently to VA and the Congressional Committees on Veterans' Affairs (section 204).

5. Require VA to specify in its FY 1992 and FY 1993 budget documents the type and amount of resources that are proposed to be spent in the coming fiscal year on PTSD-related activities (section 205).

Part B—General Health

Part B of this title includes freestanding provisions and amendments to chapter 17 of title 38 and to Public Law 100-322 that would:

1. Authorize VA to provide prosthetic appliances to certain veterans with non-service-connected disabilities if the provision of such appliances would obviate the need for hospitalization (section 211).
2. Authorize outpatient dental care that is medically necessary in preparation for hospital admission or for a veteran otherwise receiving VA medical treatment (section 212).
3. Increase from $2,500 to $5,000 the maximum amount of a one-time grant for structural home modifications as part of home health services furnished in the treatment of a service-connected disability and from $600 to $1,200 the maximum for such grants in connection with the treatment of a non-service-connected disability (section 213).
4. Make permanent the program of community-based contract alcohol and drug treatment, which is scheduled to expire on September 30, 1991 (section 214).
5. Extend for 5 years, through FY 1995, VA's authority to provide contract care to United States veterans in the Veterans Memorial Medical Center (VMMC) in the Republic of the Philippines and the authorization of appropriations for annual grants of $1 million to the VMMC, with the first $50,000 earmarked for educating and training of VMMC personnel and the remainder to be available for the replacement and upgrading of equipment and rehabilitation of the VMMC physical plant (section 215).
6. Authorize VA medical centers to convert space at their facilities for child-care purposes without requiring reimbursement for the cost of conversion from the provider of the child-care services (section 216).
7. Extend for 3 years VA's authority to sell acquired properties to public or non-profit entities for use as shelters primarily for homeless veterans and their families and extend that authority so as to authorize the sale of acquired properties to public or nonprofit entities for use as transitional housing for veterans who are being furnished care and services under chapter 17 of title 38, for alcohol or drug disabilities or mental illness disabilities (section 217(a)).
8. Establish a revolving fund—by transfer of $100,000 initially from the Canteen Service Revolving Fund—from which loans may be made to assist in the establishment of transitional residences for veterans who are being furnished services by VA, directly or by contract, for alcohol or drug dependence or abuse disabilities, or who have recently been furnished such services by VA (section 217(b)).
9. (a) Require each VA medical center or regional benefits office, in consultation with all VA facilities serving veterans in the appropriate service area and with existing community-based organizations that have experience in working with homeless persons, to make an assessment with respect to the needs of homeless veterans living within that facility's catchment area and to identify the needs of homeless veterans in the areas of health care, education,

training, employment, shelter, counseling, and outreach services and the extent to which these needs are being met by VA programs, other government programs, and private programs; (b) require each VA medical center, in conjunction with the appropriate VA regional benefits office and Director of Veterans Employment and Training within the State concerned, to develop, within 90 days after enactment, an annual plan for each of FYs 1991, 1992, and 1993 for outreach and the provision of comprehensive services to homeless veterans in that VAMC/VARO catchment area and, in developing such a plan, to attempt, to the maximum feasible extent, to meet, within existing authorities and available resources, those needs identified in the assessment as unmet and to coordinate with other Federal, State, and local programs that provide services to homeless persons or homeless veterans; (c) require that the plan include a list of all local private and governmental programs that offer assistance to homeless persons or homeless veterans and identify the services offered by those programs; (d) require the director of each medical center to be responsible for the carrying out of its plan and to take appropriate steps to seek to inform each homeless veteran, and each veteran who is at risk of becoming homeless, of the services available to the veteran within the area served by the medical center; (e) require the director of each medical center to disseminate to other Federal and State government agencies, local governments, and all private entities that provide services to homeless veterans information regarding services provided to homeless veterans by the medical center or other facility of the Department; (f) extend the VA's Homeless Chronically Mentally Ill (HCMI) program's authorization of appropriations in McKinney Act II (Public Law 100-628), increasing it from the FY 1990 $15-million level to $30 million for FY 1991, $35 million for FY 1992, and $40 million for FY 1993; (g) extend the VA Domiciliary Care for Homeless Veterans (DCHV) program's authorization of appropriations in that Act, increasing it from $15 million in FY 1990 to $20 million for FY 1991, $22.5 for FY 1992, and $25 million for 1993; and extend the HCMI program's authority in Public Laws 100-322 and 101-237 (which currently expires at the end of FY 1992) through FY 1993; (h) authorize $1.5 million to be appropriated per year for 3 years (FYs 1991, 1992, and 1993) for a pilot program at up to 15 sites at which VA would be authorized to contract with existing community-based organizations (with demonstrated effectiveness in providing relevant services to homeless persons or homeless veterans) for the provision of domiciliary care (including medical services) for veterans eligible for such care; (i) provide that, in entering into contracts, preference be given to community-based organizations offering the most comprehensive services, particularly those services identified in the assessment as not being adequately provided by existing programs; (j) authorize the Secretary, if it is determined that the pilot domiciliary-care programs are demonstrating effectiveness in meeting the needs of homeless veterans, to expend on these pilot programs funds appropriated for the HCMI program or the DCHV program above the amount expended for those programs in the preceding fiscal year; (k) authorize VA to accept donations for the purposes of establishing one-stop, non-residential service centers and mobile support teams and expanding the health services available to homeless veterans eligible for VA benefits and services; and (l) require by February 1, 1993, an independent evaluation of the effectiveness of VA's implementation during FYs 1991 and 1992 of the program discussed in items (a)–(k), above (section 218).

10. Extend for one year, through FY 1991, the authorization for VA's mobile health clinic pilot program and provide that all funds appropriated for the program shall remain available until expended (section 219).

11. Require the Secretary to establish an advisory committee on VA's prosthetics programs comprised of representatives of prosthetics user groups and recognized experts in the fields of engineering, prosthetics research, rehabilitative medicine, and clinical treatment, and to require annually, for the next 3 years, advisory committee reports beginning on January 15, 1991 (section 220).

12. Require VA (a) to furnish services to a service-connected-disabled veteran or the spouse of such a veteran to achieve pregnancy in cases in which the veteran's service-connected disability impairs procreative ability; (b) to establish an interdisciplinary task force to advise VA's Chief Medical Director (CMD) on the implementation of this provision; and (c) to furnish these services on a contract basis only, except for services that the CMD determines VA clearly can provide directly (section 221).

13. Authorize VA compensated work-therapy (CWT) programs to contract with elements of VA, as well as other private or governmental sources, to provide for the work involved (section 222 (a)).

14. Authorize the use of funds from the Special Therapeutic and Rehabilitation Activities Fund (STRAF), which is used for the operation of CWT programs, to defray the costs of travel and related expenses necessary to train and educate VA employees to administer CWT programs (section 222(b)).

15. Require VA to conduct a 5-year, two-part CWT and therapeutic residence (TR) pilot program at not more than 25 VA health-care facilities, under which VA would be required (a) at not less than 10 nor more than 15 of these sites, to promote and participate in the establishment of nonprofit corporations with which VA would contract to run CWT programs as long as the nonprofit runs a TR, and (b) directly to acquire and operate TRs for veterans participating in CWT programs at not less than 10 nor more than 15 of these sites.

(1) As to VA's contracting with nonprofit corporations for the operation of a CWT program in conjunction with a TR, provide for the following:

(A) Authorize VA to make demand-note loans to the nonprofit corporation in the amounts of (i) either 25 percent of the purchase price or the total of one year's rent in the case where the property is to be leased and, (ii) the estimated cost of operating the TR for 6 months; provide that the loans would not bear interest for the first 5 years and thereafter would bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury; provide that the loans are to be made from unobligated funds in the STRAF; make the security for the note subordinate to any purchase-money mortgage; and require that, if the corporation sells the residence, the proceeds of the sale would be used to repay the unpaid balance of the loan and to pay VA 50 percent of any profit realized from the sale.

(B) Require VA to deposit the loan in an escrow account and permit the funds to be disbursed to the corporation only upon its demonstrating to VA's satisfaction that at least 25 percent of its annual operating expenses for running the TR (over and above the expenses anticipated to be paid from VA patients' rental payments) would be paid from non-VA sources (either in cash or in in-kind services).

(C) Authorize VA to provide in-kind services (including technical and clinical expertise, building-rehabilitation supervision, and minor maintenance and repairs to the residence) to the corporation; and provide that services would be considered as "pass through" expenses and, accordingly, would not be subject to adjustment by VA's Resources Allocation Methodology or any other methodology VA uses in allocating funding to its health-care facilities.

(D) Require the corporation, when it ceases to operate the TR, to return to the STRAF out of the proceeds from the sale of the property any loan amount it owes to VA plus 50 percent of any profits from the sale.

(E) Direct the Secretary to transfer to the Veterans Health Services and Research Administration (VHS&RA) not less than ten properties acquired by VA as a result of defaults on loans under its home-loan guaranty program, for VHS&RA to lease to nonprofit corporations, which have CWT contracts and agree to use the properties as TRs, for terms of 1 to 3 years, with renewal options permissible for up to another 3 years; require the corporation to pay to the VA health-care facility 60 percent of the rent collected from veteran residents, for subsequent transfer by VA into the appropriate loan guaranty program revolving fund; and require the corporation, upon termination of the lease, to return the property to the Secretary for disposition in accordance with loan guaranty program procedures.

(F) Direct that any existing nonprofit corporation carrying out a CWT program be grandfathered in its CWT operations without regard to the provisions in the bill.

(G) Provide for the structure of the CWT/TR nonprofit corporations to be similar to that of the research nonprofit corporations, which are currently authorized in subchapter VI of chapter 73 of title 38, in terms of their general powers, the structure of their boards of directors (but with VA employees limited to being a minority of board members), the applicability of State law accountability, oversight, and authority to accept gifts or grants.

(H) Provide that the pilot program may be conducted through nonprofit corporations only at VA health-care facilities that have existing CWT programs.

(2) As to VA's direct operation of TRs:

(A) Require VA to allow only veterans participating in VA CWT programs and a house manager to reside in a TR and to prescribe limits on the length of time a veteran may reside in a TR; charge each resident, other than the house manager, rent in a reasonable amount to be determined through procedures prescribed by the Secretary, with the rent to be deposited into the STRAF; consult with appropriate representatives of the community and comply with zoning, building-permit, and similar requirements applicable to other real property used for similar purposes in the community; meet State and local requirements relating to fire and safety standards; provide adequate federal supervision of the residents at the TRs; be responsible, through the CMD, subject to the direction and control of the Secretary, for the management, maintenance, and disposition of the properties acquired; and ensure that the proceeds, if any, resulting from the disposal of a TR are credited to the STRAF.

(B) Permit VA to provide house managers with free room and subsistence in addition to or instead of other compensation and require that the manager's total compensation be no less than any applicable minimum-wage rate.

(C) Authorize the Secretary to purchase for use as TRs properties acquired by VA as a result of defaults on loans made under VA's home loan guaranty program; and require that, as payment for each such property, STRAF funds equal to the amount that would have been charged for the property if it had been sold for use as a homeless shelter under section 9 of Public Law 100–198 be transferred to the appropriate VA home-loan guaranty revolving fund.

(D) Authorize VA to form nonprofit corporations to act solely as a funding mechanism with power to accept gifts and grants and transfer those funds to STRAF.

(3) Authorize the appropriation of $5 million to the STRAF for the purposes of carrying out the CWT/TR pilot program.

(4) To the extent that less than $5 million is appropriated for this purpose, authorize the Secretary to transfer to the STRAF from unobligated funds in the General Post Fund of the VA medical facility hosting a CWT/TR program such amounts as the Secretary determines are necessary to carry out the CWT/TR pilot program.

(5) Require VA to submit, not later than February 1, 1994, to the Congressional Committee on Veterans' Affairs a report on the experience under the pilot program, including an evaluation of the impact of the loan guaranty program foreclosed property transfers to VHS&RA on VA's home loan guaranty program (section 222(c)).

16. Require that (a) VA conduct a 4-year pilot program (with a report after 3 years) for the purpose of furnishing health, rehabilitative, and (by contract with non-VA entities) health-related services in noninstitutional settings; (b) participation in the program be limited to veterans who are eligible for and otherwise in need of

nursing home care and are either (1) receiving or needing that care primarily for the treatment of a service-connected disability, or (2) have service-connected disabilities rated at 50 percent or more; (c) VA case managers be used to coordinate and facilitate services contracted for with public and private agencies; and (d) the total cost of the program during each fiscal year be limited to not more than 65 percent of the total cost that would have been incurred in furnishing the veterans involved with nursing home care instead (section 223).

17. (a) Extend until September 30, 1995, the requirement for the Secretary to conduct a pilot program of preventive health-care services; (b) expand the categories of veterans to whom VA is required to furnish such services to include all veterans who are entitled to receive the care they are receiving; (c) require that those veterans annually be offered a minimum of two preventive health-care services when they are otherwise receiving care; (d) require that each VA health-care facility annually implement a major preventive heath-care and health-promotion initiative; (e) expressly provide that the permissible scope of preventive health care services under the pilot program include stress management, smoking cessation, physical fitness, and screening for high blood pressure, glaucoma, colorectal cancer, and cholesterol; (f) require the Secretary to submit reports on the experience under the pilot program; (g) limit pilot-program expenditures to $16 million in FY 1991, $17 million in FY 1992, $18 million in FY 1993, $19 million in FY 1994, and $20 million in FY 1995; and (h) require the CMD to designate a Director of Preventive Health and Health Promotion Programs (section 224).

18. Require that (a) VA conduct a 4-year pilot program under which VA would be required, as to assistive monkeys, and authorized as to service dogs, to furnish to quadriplegic veterans who have service-connected disabilities rated at 50 percent or more and to facilitate the furnishing of these assistive animals to other quadriplegic veterans; and (b) before any assistive monkeys are furnished to veterans under the pilot program, the CMD provide for an independent evaluation of the way the monkeys would be treated and ensure that the person or organization performing the evaluation consults with representatives of appropriate animal welfare organizations prior to the conduct of the evaluation (section 225).

19. Authorize VA (a) to provide signal dogs to veterans who have service-connected hearing impairments and are in need of the assistance of such a dog an (b) to pay a veteran's expenses for necessary travel in connection with the veterans becoming adjusted to the dog (section 226).

20. Require the Secretary to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report by January 15, 1991, containing (a) an evaluation of the reasons for the accumulation of the backlog in VA's provision of prosthetic appliances that grew to $10.6 million in FY 1989 and for the failure to observe, in connection with the provision of prosthetic appliances, the statutory priorities established for the treatment of many of the veterans involved; and (b) a description of the actions that the Secretary has taken, and is planning to take, to prevent

such a recurrence of the accumulation of such a significant backlog and of failure to observe such priorities (section 227).

21. Increase from $500 to $1,000 the amount which a fee-basis dentist can charge prior to VA's requiring a second opinion (section 228).

22. Repeal the Secretary's authority to provide free tobacco products to veterans receiving hospital or domiciliary care (section 229).

23. Revise VA's authority to enter into agreements for sharing scarce medical resources so as to (a) expand the categories of facilities with which VA may enter into sharing agreements to include all health-care facilities; (b) delete the requirement that reimbursement rates cover full costs and substitute a standard providing for flexibility after costs are taken into account; and (c) provide that payments for the use of VA resources be returned to the VA facility furnishing the resource (section 230).

24. Require VA to establish a task force—including representatives of VA offices with responsibility for the benefits involved and appropriate representatives of concerned organizations—to recommend policies and legislation for the elimination of inconsistencies among provisions relating to eligibility for medical devices and certain other rehabilitative health-care benefits (section 231).

Part C—Health-Care Personnel

Part C of this title, entitled "Veterans Health-Care Personnel Act of 1990", includes freestanding provisions and amendments to chapters 73, 76, and 82 of title 38 that would:

1. Establish a program to provide, in return for agreements for service with VA, post-secondary educational assistance—a $400-per-month stipend—to reservists who are students in health professions and are eligible for educational assistance under the Montgomery GI Bill (section 242).

2. (a) Require the Secretary to take steps to establish and maintain, for full- and part-time registered nurses, registered nurse anesthetists, and certified registered nurse anesthetists, levels of pay which are competitive with but do not exceed the pay offered by employers which offer similar employment and compete in the same labor market area for qualified employees; and (b) authorize the Secretary to establish and maintain levels of competitive pay for employees covered by title 38 for pay purposes only—the so-called "hybrid" category, which includes certain psychologists, respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, and occupational therapists (section 243).

3. Require VA to pay overtime to registered nurses, registered nurse anesthetists, and certified registered nurse anesthetists at the rate of one and one-half times the otherwise applicable hourly rates of basic pay (section 244).

4. Require the Secretary to provide a 6-percent pay differential to nurses appointed to head nurse positions, or assigned to such positions in excess of 30 days, and provide for this pay to be considered as base pay for the purposes of determining other employment benefits (section 245).

5. Provide the Secretary with discretion to pay to health-care personnel employed under title 5 or the title 5/title 38 "hybrid" appointment authorities who furnish direct patient care or services incident to direct patient care additional pay on the same basis as registered nurses (section 246).

6. Increase the cap on special salary rates so as to permit the rates to exceed by two times the difference between the minimum and maximum of the applicable grade and require the Secretary to notify the Committees on Veterans' Affairs when a special salary rate becomes 94 (or more) percent of the maximum amount permitted (section 247).

7. Require the Secretary to award each nurse, upon recertification in a specialty, an amount equal to one percent of the nurse's annual basic rate of pay if the nurse is employed in the clinical specialty in which he or she is certified and if the most recent performance evaluation of the nurse was not less than satisfactory (section 248).

8. Make the labor-management rights of Federal employees generally (under chapter 71 of title 5) applicable to the Secretary's authority under section 4108(a) to establish the hours and conditions of employment and leaves of absence of title 38 employees (except with respect to the prohibitions set out in paragraphs (1) through (6) of that section, which pertain to potential conflict-of-interest situations arising in the context of health care) (section 249).

9. (a) Remove from the coverage of the provisions governing disciplinary actions against title 38 employees (section 4110 of title 38) certain lesser proposed penalties—specified as suspension for 14 days or less, reassignment or reduction in rank without a reduction in basic pay, reprimand, or admonishment; (b) provide that, in such cases, a title 38 employee would be entitled, in lieu of a section 4110 proceeding, to a process which would include (1) advance written notice setting forth the specific reasons for the proposed action, (2) a reasonable time to answer the notice, either in writing or orally, including time to furnish affidavits and other documentary evidence in support of the answer, (3) a chance to be represented by an attorney or some other representative, and (4) a written decision, including the reasons for the decision, at the earliest practicable time; (c) provide two methods by which title 38 employees would gain a review of a decision on such a specified lesser disciplinary matter or of a decision on a grievance: (1) for those title 38 employees who are not members of bargaining units, an agency review procedure established by the Secretary, and (2) for those employees who are members of such a unit, a negotiated grievance procedure which would include binding arbitration; and (d) provide that any agency review procedure established by the Secretary with respect to proposed disciplinary actions and grievance resolution regarding title 38 employees who are not covered by collective bargaining agreements would have to include (1) an informal review of the decision on the disciplinary action by a VA official of a higher level than the official who made the original decision and a prompt decision following that review, (2) a right to have the matter reviewed further by a impartial examiner from within VA who would have to submit a prompt report of findings and recommendations, and (3) a prompt review of those findings and recom-

mendations, as well as any comments the employee or the Department or both wish to make on the findings and recommendations, by a Department official at a higher level than the one who carried out the first informal review (section 250).

10. (a) Authorize extending, for a period not to exceed 2 years, the temporary full-time appointment of a nurse or a health-care professional appointed under the title 5/title 38 "hybrid" appointment authority, such as a licensed practical nurse, physical therapist, occupational therapist, or pharmacist, who has completed a full course of academic training and is awaiting licensure or certification; and (b) authorize extending, for a period not to exceed the length of an academic program, the temporary appointment of a student who is pursuing an academic degree in physical therapy, occupational therapy, pharmacy, or nursing (section 251).

11. Require (and authorize for other title 38 employees), effective September 1, 1990, that (a) cash awards analogous to those required by sections 5406 of title 5 be paid to title 38 supervisors and managers (including head nurses) who receive the highest proficiency rating possible, as determined under criteria promulgated by the Secretary; (b) such awards range from 2–10 percent of the employee's base annual salary but allow the award to be increased to up to 20 percent if the employee's performance is unusually outstanding; (c) the aggregate amount paid for such awards be limited in a manner identical to that provided in section 5406(c)(1) of title 5, which establishes the maximum total amount of cash awards as not more than 1.5 percent multiplied by the aggregate amount of basic pay payable to the covered employees in the agency and the minimum amount as not less than 1.15 percent multiplied by the aggregate amount of basic pay payable to covered employees in the agency; and (d) the Secretary establish a cash award program identical to the program under section 5407 of title 5 (which provides for amounts up to $10,000 or, for outstanding performance, up to $25,000) for title 38 supervisors and managers in grades comparable to General Schedule grades 13–15 who, by their suggestion, invention, superior accomplishment, or other personal effort, contribute significantly to the Federal government (section 252).

12. Authorize the Secretary to establish and operate a dependent care assistance program for the care of dependents of VHS&RA employees that meets the requirements of section 129 of Internal Revenue Code (section 253).

13. (a) Authorize the appropriation of $5 million for each of FYs 1991 and 1992 and $6 million for each of FYs 1993 and 1994 for VA to reinstitute a program of VA funding for the expansion or improvement of programs in post-secondary schools to educate health-care professionals; (b) provide for such funds to remain available until the end of the fifth fiscal year following the fiscal year for which they are appropriated; (c) require that the development of new health careers, interdisciplinary approaches, and career-advancement opportunities with this VA assistance occur in collaboration with professionals carrying out the duties involved; and (d) authorize VA to expend up to 10 percent of each year's appropriation under this provision on VA programs designed to develop or initiate improved methods of education and training for health-care personnel (section 254).

14. Require VA during calendar years 1991, 1992, and 1993 to conduct, and submit periodic reports on, a pilot program at not less than five VA medical facilities to determine the desirability of: (1) establishing programs which foster interdisciplinary professional collaboration and collegial relationships among physicians, registered nurses, and other personnel furnishing direct patient care; (2) creating new alternatives for utilizing the skills and knowledge of registered nurses and other health-care personnel in furnishing direct patient care or services incident to direct patient care; and (3) increasing the pay differential for evening and night service (section 255).

15. Require the Secretary to increase rates of pay for VA psychologists who have board certification by using the "hybrid" title 5/title 38 appointment authority unless the Chief Medical Director certifies, within 90 days after the date of enactment, that an increase of board-certified psychologists is not necessary for VA to furnish the appropriate quality of psychological services to veterans (section 256).

Part D—Special Pay for Physicians and Dentists

Part D of this title includes amendments to chapter 73 of title 38 and freestanding provisions that would:

1. Revise special pay for physicians and dentists, effective as to pay periods beginning more than 180 days after the date of enactment, in the following manner: (a) replace the existing cap on special pay, $22,500 for a full-time physician and $10,000 for a full-time dentist, with a cap that would prohibit VA from paying any physician or dentist more than the amount specified in 3 U.S.C. 102; (b) increase the amount of special pay for a physician in full-time employment status from $6,000 to $9,000 and for a dentist from $1,000 to $3,500; (c) increase the amounts of special pay for varying lengths of service of more than two years for full-time physicians from an overall range of $1,000 to $3,000 to a range of $4,000 to $25,000 and for full-time dentists from an overall range of $500 to $1,000 to a range of $1,300 to $8,300; (d) increase the maximum amount of special pay for specialties for which VA has extraordinary difficulty in recruiting and retaining qualified doctors for full-time physicians from a range of $4,000 to $15,500 to a range of $4,000 to $40,000, and for full-time dentists from a range of $2,000 to $7,500 to a range of $2,000 to $30,000; (e) eliminate primary special pay but provide that those employed by VA on the day prior to the effective date of this measure whose special pay consists only of primary, full-time, and tenure pay would not suffer any reduction in total special pay; (f) establish special pay for specialty certification for full-time dentists—$2,000 for the first certification and an additional $500 for the second—and continue such pay for physicians; (g) increase the amount of special pay for full-time physicians in geographic locations with exceptional recruitment and retention difficulties from a range of $2,000 to $5,000 to a range of $2,000 to $15,000, and for full-time dentists from a range of $1,750 to $2,500 to a range of $1,750 to $5,000; (h) establish a new category of special pay, called "Exceptional Qualifications," under which VA may pay up to $15,000 to a full-time physician and up to

$5,000 to a full-time dentist, to the extent that the overall total pay allowed for all other applicable factors—full-time status, longevity, scarce specialty, service in specific geographic area, board certification, and service in an Executive Medicine position—is not exceeded; (i) direct that a physician or dentist working at least half-time but less than full-time be paid special pay on the basis of the same factors as apply to those working full-time (except for full-time service) in direct proportion to hours worked; (j) authorize the CMD to pay a physician or dentist employed less than half-time special pay (except for full-time pay) in proportion to hours worked when that is shown to be the most cost-effective alternative for VA to acquire the services in question; (k) revise the rates of executive medicine special pay for physician and dentist Service Chiefs and Chiefs of Staff, replacing fixed rates with ranges of rates providing specific minimums other than zero; (l) increase the rates of executive medicine special pay for physicians and dentists serving in VA Central Office as Deputy Service Directors, Service Directors, Deputy Assistant Chief Medical Directors, Assistant Chief Medical Directors (ACMDs), Associate Deputy Chief Medical Director, Deputy Chief Medical Director, and Chief Medical Director; (m) expand the provision for executive medicine special pay for ACMDs in VA Central Office ($30,000 for physicians, $10,000 for dentists) to include comparable positions as determined by the CMD; (n) provide for calculation of special pay for physicians or dentists assigned to executive medicine positions in VA Central Office who are also placed in field positions, and for others serving in dual positions, in proportion to the amount of time devoted to each position; (o) give the CMD discretion to pay scarce specialty pay to a VA Central Office executive physician or dentist upon the determination that those special skills are necessary in order for that executive to carry out the assigned VA Central Office job; (p) includes special pay in retirement calculations for part-time physicians and dentists in proportion to the amount received; (q) provide that the use of the new special pay rates in the calculation of retirement benefits would apply only in the case of those who serve at least 15 years in VHS&RA and that that calculation be phased in increments of 20 percent at the end of every 2 years; (r) require the Secretary to include in the annual report to the Veterans' Affairs Committees (1) a review of the use of the authorities provided; (2) the Department's plans for the use of the authorities in the current and next fiscal years; (3) a description of the amounts paid in each category of special pay; (4) a list of the geographic areas and the scarce specialties for which special pay was paid in the previous fiscal year, is being paid in the current fiscal year, and is expected to be paid in the following fiscal year; (5) the numbers of physicians and dentists who changed from full-time to part-time employment status, from part-time to full-time, or left VHS&RA employment; (6) the numbers of positions abolished and created, by specialty, and summaries of the reasons for such actions; (7) the number of unfilled positions in each specialty, the length of time unfilled, a summary of the reasons and, in the case of any specialty not designated as a scarce specialty, an explanation (including comparisons with other specialties that have been so designated) of why the specialty has not been so designated; and (8) a discussion of whether provision for periodical COLAs is needed to implement these special pay provisions in order to recruit and retain high-quality physicians and dentists (section 262).

2. Provide that (a) VA physicians' and dentists' special pay agreements that were entered into before the effective date of the provisions described in item 1, above, would remain in effect under the terms and conditions that originally applied; but (b) permit VA and a physician or dentist mutually to agree to terminate such an agreement if (1) the agreement expires more than one year after that effective date, (2) the termination is for the purpose of permitting the physician or dentist to enter into a special-pay agreement under the new provisions; and (c) such a termination would not take effect until the physician or dentist has completed at least the first year of service under the old agreement (section 265).

3. In the case of a VA physician or dentist who was a full-time VA employee on October 1, 1980, and elected under section 103(b) of Public Law 96-330 not to have special pay counted as basic pay for retirement and insurance purposes, permit him or her to make an irrevocable election, at the time of entering into a special-pay agreement under the new provisions, to have special pay under the new provisions considered as basic pay for those purposes (section 266).

4. (a) Require the CMD to reimburse full-time, board-certified physicians and dentists, and authorize the CMD to reimburse other VHS&RA physicians and dentists, for up to $1,000 of expenses for continuing education; and (b) authorize the CMD to reimburse amounts greater than $1,000 if the CMD deems appropriate (section 264).

TITLE III—EDUCATION AND EMPLOYMENT

This title includes freestanding provisions and amendments to chapters 30, 31, 32, 35, 36, and 41 of title 38, United States Code, and chapter 106 of title 10 that would:

1. Extend through the end of calendar year 1993 the inclusion of veterans of the Vietnam era as an element of the statutory formula for the Federal funding of disabled veterans' outreach program specialists (DVOPs) (section 301).

2. (a) Authorize the Secretary of Labor under certain circumstances to expand beyond the current 10-State limit the transition assistance program of employment and training assistance and information established in section 408 of Public Law 101-237, the Veterans' Benefits Amendments of 1989, enacted on December 18, 1989; (b) permit such an expansion only if the Secretary determines, after consultation with the Secretaries of Veterans Affairs and Defense, that (1) the program has been successful, (2) the expansion is necessary to address the needs of increasing numbers of persons being separated from the Armed Forces, (3) the program has received sufficient resources from the Departments of Labor, Veterans Affairs, and Defense, (4) the program, if expanded, will continue to receive sufficient resources, and (5) the expansion will not interfere with the provision of services to eligible veterans and other eligible persons; (c) require that notice of an expansion be submitted to the Congressional Committees on Veterans' Affairs 60

days in advance of an expansion unless the Secretary of Labor, upon the request of the Secretary of Defense, waives the requirement that the notice be provided in advance; (d) require the Secretary of Labor to request resources for the program from the Secretaries of Veterans Affairs and Defense; and (e) authorize the Secretary of Labor to request support for the program from veterans' service organizations (section 302).

3. Expand, effective October 1, 1990, eligibility for chapter 31 rehabilitation services and assistance for servicemembers being treated for service-connected disabilities pending discharge from active duty, to include persons who are (a) receiving outpatient medical treatment, or (b) receiving inpatient care at Department of Defense (DoD) expense in a non-DoD facility (section 303).

4. Extend by 1 year the date on which a participant in the Post Vietnam-Era Veterans' Educational Assistance Program (VEAP) who has unused VEAP entitlement is automatically disenrolled from the program (section 304).

5. Permit an individual who is indebted to the United States as the result of participation in a program of VA-administered educational assistance or rehabilitation to perform work-study services and have the work-study allowance credited to his or her indebtedness (section 305).

6. Extend, effective October 1, 1990, to participants in VEAP the same opportunity currently available on a trial basis, through fiscal year 1994, to Montgomery GI Bill participants to use education benefits for the pursuit of flight training (section 306).

7. Extend, effective as of January 1, 1977, eligibility for Vietnam-era GI Bill benefits to members of the 1977 and 1978 graduating classes of the service academies and to 1978 Senior Reserve Officer Training Corps graduates (section 307).

8. Effective August 1, 1990 (a) repeal the existing limit on changes of educational program which generally permits no more than two changes of program (except for changes necessitated by circumstances beyond the student's control); and (b) in the case of second and subsequent changes of program, permit VA approval of the change only if (1) the veteran or eligible person accepts educational or vocational counseling services referred to in section 1663 of title 38, and (2) the Secretary determines, on the basis of the results of the educational or vocational counseling, that the change is suited to the veteran's or person's apptitudes, interests, and abilities (section 308).

TITLE IV—HOUSING

This title contains amendments to chapter 37 of title 38 that would:

1. Make permanent the requirement for VA to inform and counsel a veteran about the impact of, and alternatives to, foreclosure when the veteran defaults on a VA-guaranteed home loan (section 401).

2. Allow VA to sell vendee loan assets either (a) with recourse or (b) without recourse only if the amount received by VA is at least equal to the unpaid balance of the loan (section 402).

3. Extend for two years (through FY 1992) the authority for certain lenders to review appraisals (section 403).

4. Make permanent the "no-bid" formula in section 1832(c) of title 38 and the vendee-loan and property-management provisions in section 1833(a) of title 38 (section 404).

5. Exempt individuals obtaining VA-guaranteed loans from the requirement that individuals obtaining U.S. Government-guaranteed loans of over $150,000 disclose their lobbying activities (section 405).

6. Require VA, at the request of the Secretary of Housing and Urban Development and without charge, to issue certificates of veteran status to veterans seeking certain benefits under laws administered by HUD (section 406).

7. Limit the time during which a veteran may apply to VA for waiver of a home-loan debt to one year after the date VA notified the debtor of the indebtedness (section 407).

TITLE V—INSURANCE

This title includes amendments to chapters 19 and 21 of title 38 that would:

1. Authorize VA to provide supplemental coverage, at standard premiums, of up to $10,000 in Service Disabled Life Insurance to certain veterans who are eligible for a waiver of premiums due to total disability (section 501).

2. Increase from $40,000 to $90,000 the maximum amount of coverage under Veterans' Mortgage Life Insurance Policies (section 502).

TITLE VI—MINORITY AFFAIRS

This title includes a freestanding provision and an amendment to the Department of Veterans Affairs Act (Public Law 100-527) that would:

1. Require the Secretary to assign to an Assistant Secretary responsibility for assessing the effects of VA policies and activities regarding minority veterans, including women veterans, and for coordinating and monitoring policies facilitating and access of such minority veterans to VA benefits and services (section 601).

2. Reestablish the Advisory Committee on Native American Veterans for an additional 2 years (section 602).

TITLE VII—MISCELLANEOUS

Title VII contains amendments to chapters 1, 3, 24, 30, 32, 36, 37, 51, 53, 55, 59, 71, 72, 81 of title 38, section 3 of the Department of Veterans Affairs Act (Public Law 100-527), and section 6103(1) of the Internal Revenue Code of 1986, that would:

1. Clarify the eligibility of certain minors for burial in national cemeteries and authorize the use of flat grave markers in a section of Florida National Cemetery (section 701).

2. Clarify that the prohibition on the payment of attorneys' fees in connection with VA benefits applies only where the individual is applying for benefits and not to debt-collection cases (section 702).

3. Modify the prohibition against certain VA administrative reorganizations that close, or reduce personnel at, VA facilities or of-

fices during any given fiscal year unless VA has provided the Congressional Committees on Veterans' Affairs with notice of the reorganization not later than the date on which the President transmits the budget for that fiscal year by (a) postponing the reporting deadline to the April 1 preceding that fiscal year; (b) exempting any consolidation or redistribution of functions between components at a VA medical and regional office center (VAM&ROC) if the same number of full-time employee equivalents would continue to perform the affected functions at that VAM&ROC; and (c) limiting the scope of the provision to offices or facilities which have as their primary mission providing care or services to veterans (section 703).

4. Establish, effective October 1, 1990, a 4-year "enhanced-use lease" pilot program under which (a) VA would be authorized to enter into extended leases of selected VA-owned properties and accept in-kind consideration in lieu of or in combination with cash if (1) the Secretary determines that the proposed lease will provide a cost-effective means of carrying out or providing appropriate space for an activity contributing to the VA mission and will be consistent with and not adversely affect that mission, (2) selection is made pursuant to competitive procedures, (3) the term of the lease does not exceed (A) 35 years if construction of a new building or the substantial rehabilitation of an existing building is involved, or (B) 20 years otherwise, (4) a local, public hearing is conducted after prescribed notice is given, (5) the Secretary provides to the Congressional Committees on Veterans' Affairs and publishes in the Federal Register advance notice of VA's intention to designate the property for an enhanced-use lease (with the deadline for the notice being not less than 90 days before entering into the lease if notice is given in the first 3 months of a calendar year or not less than 180 days before entering into the lease if notice is given at any other time, and (6) a second, updated notice containing a cost-benefit analysis is provided to the Committees not less than 30 days before the lease is entered into; (b) special disposition of a leased property would be authorized if (1) during the term of the lease or within 30 days after its expiration the Secretary determines that the leased property is not needed by VA and initiates action for the disposal to the lessee, (2) the Administrator of General Services is requested to carry out a special disposition, and (3) 90 days advance notice is provided to the Congressional Committees on Veterans' Affairs and published in the Federal Register; (c) funds received by VA under the lease or from a special disposition of leased property would be deposited in the Nursing Home Revolving Fund; (d) construction standards for Federal buildings would apply; (e) VA's interest in an enhanced-use lease would be exempt from State and local taxes; and (f) the number of enhanced-use leases would be limited to not more than 30 under the pilot program and not more than 10 in any fiscal year, not counting any lease the primary purpose of which is the provision of child-care services for VA employees (section 704).

5. Make applicable to judges of the Court of Veterans Appeals the provisions of section 455 of title 28, United States Code, relating to disqualification (section 705).

6. Amend section 113 of title 38 to make all funds in VA's Medical Care account, including administrative expenses, exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) (section 706).

7. Make a series of technical corrections which would (a) amend section 1418(b)(4) of title 38 in the same manner as sections 1411(a)(2) and 1412(a)(2) were amended by Public Law 100–689, the Veterans Benefits and Improvements Act of 1988, in order to include chapter 30 "open-period enrollees" among those who may meet the chapter 30 secondary-school-completion requirement by completing 12 credit hours in standard college degree program; (b) correct an omission in the list of subsections referenced in section 1432(f) of title 38 by including in that list subsection (d)(1) of section 1415 of title 38; (c) amend section 1433(b) of title 38 so as to replace an outdated reference to "section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note)" with a reference to "chapter 106 of title 10, United States Code"; (d) amend section 1685(a)(1) of title 38 so as to add a reference to National Guard and Coast Guard facilities among those at which activities related to the administration of chapter 106 of title 10 are authorized for purposes of work study; (e) delete the erroneous reference to chapter 107 of title 10 in section 1774(a)(1) of title 38; (f) correct a technical error in the Veterans' Benefits Amendments of 1989 (Public Law 101–237) that mistakenly omitted refinancing loans from the higher loan limits established in that measure; (g) make a technical correction in a provision requiring a builder's warranty for a newly constructed home; (h) make a correction in the heading of section 3004 of title 38; (i) and make several terminology changes in title 38 (such as changing "Administrator" to "Secretary") having no substantive effect (section 707).

8. (a) Extend, effective October 1, 1990, from three to twelve months the period during which a veteran with no spouse or dependent children may be furnished domiciliary or nursing-home care by VA before the veteran's VA pension is reduced; (b) provide, effective October 1, 1990, that when a veteran's pension is reduced for veterans receiving VA domiciliary or nursing-home care, up to $10,000 of the benefits withheld would be repaid to the veteran upon discharge from the facility; and (c) increase from $1,500 to $6,000 the maximum value of the estate of an incompetent veteran who has no dependents and is being furnished institutional care at government expense that is allowed before VA suspends the veteran's compensation or pension benefits, and increase from $500 to $2,000 the amount to which the veteran's estate must be reduced before suspended compensation or pension payments are resumed (section 708).

9. (a) Specify that the Secretary may not delegate the functional and technical supervision of the performance of security and law enforcement functions within VA to any official outside the Office of the Secretary; (b) require the Secretary, within 120 days after enactment, to submit a report containing, retention, and pay of VA security personnel, as well as an assessment of (1) the need for establishing a policy on the issuance of weapons to security personnel assigned to medical centers located in high-crime areas and the use of weapons by such personnel, (2) the various options available to

the Secretary for providing improved protection for security personnel assigned to medical centers in high-crime areas, and those not located in high-crime areas, and (3) the adequacy of the number and deployment of security and law enforcement personnel at each VA medical center (section 709).

10. Amend paragraph (7) of section 6103(1) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(1)(7)), relating to disclosures of certain third-party and self-employment tax information (from the Commissioner of Social Security or the Secretary of the Treasury) to Federal, State, and local agencies administering certain programs under the Social Security Act (essentially Supplemental Security Income, Aid to Families with Dependent Children, and Medicaid), the Food Stamp Act of 1977, or the unemployment compensation program for purposes of income verification, so as to require disclosure to VA of (a) all such information for purposes of determining eligibility for VA needs-based pension programs under chapter 15 of title 38 or any other law administered by VA, needs-based parents' dependency and indemnity compensation provided under section 415 of title 38, and VA health-care services based on income status under section 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, and (b) only wage and self-employment information from such returns for purposes of determining eligibility for compensation paid, pursuant to section 4.16 of title 38, Code of Federal Regulations, at the total-disability-rating level based on an individual determination of unemployability (section 710).

11. Expand the memberships of VA Chief Medical Director and Chief Benefits Director search commissions to include two additional representatives of veterans and one at-large member (section 711).

DISCUSSION

TITLE I—COMPENSATION

Part A—Generally

Disability Compensation and Dependency and Indemnity Compensation Rate Increases

Section 101 of the Committee bill, which is derived from section 101 of S. 2100 as introduced, would require the Secretary of Veterans Affairs to increase, effective December 1, 1990, the rates and limitations for compensation paid to veterans with service-connected disabilities and the rates of dependency and indemnity compensation (DIC) paid to certain service-connected disabled veterans' survivors. The adjustment would be the same percentage—which the Congressional Budget Office currently estimates to be 4.5 percent and the Office of Management and Budget estimated in January to be 3.9 percent—provided to Social Security recipients and VA pension beneficiaries and would take effect on the same date as those increases. These increased benefits actually would be paid beginning on January 1, 1991.

Background

The service-connected disability compensation program under chapter 11 of title 38, United States Code, provides monthly cash benefits to veterans who have disabilities that were incurred or aggravated during active service in our Nation's Armed Forces.

The amount paid depends upon the nature of the veteran's disability or combination of disabilities and the extent to which earning capacity is considered to be impaired. Compensable disabilities are rated according to VA's Schedule for Rating Disabilities on a graduated schedule ranging from zero to 100 percent, in 10-percent increments. VA pays higher monthly rates (known as "special monthly compensation") to totally disabled veterans with certain specific, very severe disabilities or combinations of disabilities.

On July 1, 1990, VA's disability compensation program was providing benefits to 2,186,326 veterans with service-connected disabilities. That included 3,769 World War I veterans; 887,540 World War II veterans; 209,579 Korean-conflict veterans; and 648,823 Vietnam-era veterans. A veteran whose disability is rated at 30 percent or more may receive additional compensation for the veteran's spouse, children, and dependent parents. These dependents' allowances are pro-rated according to the percentage of disability. As of March 1990, 679,187 veterans received additional compensation for 1,027,402 dependents.

Under chapter 13 of title 38, DIC is paid to the survivors of servicemembers or veterans who died on or after January 1, 1957, from a disease or injury incurred or aggravated during active service. Survivors eligible for DIC include surviving spouses, unmarried children under the age of 18, certain helpless children age 18 or older, children between the ages of 18 and 23 who are enrolled in school, and certain needy parents. Under section 3112 of title 38, parents' DIC rates are automatically adjusted at the same time and by the same percentage as Social Security and VA pension benefits. Surviving spouses, children, and parents who are receiving death compensation based on deaths before January 1, 1957, may elect to receive DIC instead of death compensation.

Surviving spouses receive DIC at rates determined by the pay grade (service rank) of the deceased veteran. A higher rate is payable if a surviving spouse is so disabled as to be housebound or in need of regular aid and attendance. Additional amounts also are payable for the veteran's surviving children. Children are entitled to DIC if there is no surviving spouse, if they are age 18 or over and become permanently incapable of self-support before reaching age 18, or if they are age 18–23 and pursuing an approved course of education.

As of July 1, 1990, DIC benefits were being paid to or for 768,730 surviving spouses, 97,759 children, and 44,995 needy surviving parents.

Under section 410(b) of title 38, benefits are paid at DIC rates to the surviving spouse and children of veterans whose deaths are not service connected, if the veteran received compensation at the 100-percent rate over an extended period of time immediately prior to his or her death.

The COLA provision in the Committee bill generally received strong support from the witnesses who testified on the provision at the Committee's May 18, 1990, hearing. VA stated in its written testimony that it "supports a one-time increase in disability compensation and DIC", but also urged support for permanently tying compensation and DIC rates to the Consumer Price Index. The Committee disagrees with permanently linking compensation and DIC COLAs with annual Social Security increases.

History of cost-of-living increases

The Committee periodically reviews the service-connected disability compensation and DIC programs with a view toward ensuring that the benefits provide reasonable and adequate compensation for disabled veterans and their families. Congress has acted periodically to provide cost-of-living adjustments (COLAs) in compensation and DIC benefits to ensure that those benefits keep pace with inflation. In fact, Congress has provided annual increases in these rates every fiscal year since 1976. The following table shows the percentage increases since 1970.

TABLE 1.—HISTORY OF SERVICE-CONNECTED DISABILITY COMPENSATION INCREASES, 1970 TO PRESENT

Year	Month	Increase (percent)	Cumulative (1969 = 100)
1970	July	10	$110.00
1972	August	10	121.00
1974	May	17.2	141.00
1975	August	11.8	158.55
1976	October	8.0	171.23
1977	October	6.6	182.53
1978	October	7.3	195.86
1979	October	9.9	215.25
1980	October	14.3	246.03
1981	October	11.2	273.58
1982	October	7.4	293.82
1983	April	3.5	304.11
1984	December	3.2	313.84
1985	December	3.1	323.57
1986	December	1.5	328.42
1987	December	4.2	342.21
1988	December	4.1	356.24
1989	December	4.7	372.98

Committee bill

The Committee bill would direct VA to compute and provide increases in the monthly rates of compensation and DIC, effective December 1, 1990. The rates would be increased by the same percentage as the Social Security and VA pension cost-of-living adjustments that will take effect on that date.

The COLA also would apply to the basic DIC rates for surviving spouses and children and to the additional allowances paid to surviving spouses who are in need of regular aid and attendance or are housebound, to helpless children age 18 or over, and to children ages 18–23 attending school.

The increases in DIC automatically would result in identical percentage increases in benefits paid at DIC rates, under section 418 of title 38, to the surviving spouses and children of certain disabled veterans who, at the time of death, had a service-connected disability for which they were continuously rated totally disabled for at least either (1) 10 years, or (2) 5 years from the date of discharge from active duty. Also, under section 156(e)(1)(A) of Public Law 97-377, the DIC increases automatically would result in the same percentage increases that were terminated by section 2205 of the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Public Law 97-35). Those Social Security benefits had been paid to certain surviving spouses of those who died on active duty or from a service-connected disability for their children who were ages 16 and 17 and for children over age 19 who were secondary-school students.

Additionally, pursuant to the amendment to section 156(a)(1) of Public Law 97-377 made by section 314 of Public Law 100-322, which restored to DIC beneficiaries receiving certain Social Security-equivalent benefits the benefits which were eliminated by the OBRA of 1981, the DIC increase would be applied, effective December 1, 1990, to these restored benefits.

CBO currently estimates that the December 1, 1990, Social Security COLA, and thus the COLA provided for by the Committee bill, will be 4.5 percent. The actual Social Security COLA could be slightly different. Rather than selecting any particular percentage adjustment at the time the Committee ordered the bill reported, the Committee followed its practice in prior years of adopting a statutory link to the Social Security increase. The Committee believes this is the most equitable means of providing increases in these important service-connected benefits.

Cost: According to CBO, the enactment of section 101 would entail estimated costs of $435 million in budget authority and $393 million in outlays in FY 1991 and total estimated costs of $2.48 billion in both budget authority and outlays in FYs 1991-1995, compared to CBO's June 1990 baseline. Compared to the earlier, February 1990 baseline, enactment of this section would entail estimated costs of $397 million in budget authority and $358 million in outlays in FY 1991 and total estimated costs of $2.27 billion in both budget authority and outlays for FYs 1991-1995.

Authority To Make Readjustments in the Disability Rating Schedule Prospective Only

Section 102 of S. 2100, which is derived from section 103 of S. 2100 as introduced, would amend section 355 of title 38, United States Code, effective October 1, 1990, to clarify that VA has authority to apply only to new claims a change in evaluation methods or standards under the VA disability rating schedule.

Background

Under section 355 of title 38, the Secretary is required to "adopt and apply a schedule of ratings of reductions in earning capacity" resulting from specific disabilities. The schedule must provide eleven grades of disability, from zero percent to 100 percent, on which to base payment of disability compensation. The schedule of ratings, which appears in part 4 of title 38 of the Code of Federal Regulations, provides very specific, detailed rules for evaluating disabilities and assigning percentage ratings.

Section 355 requires that the Secretary "from time to time readjust this schedule of ratings in accordance with experience."

Under the current system, a veteran receiving compensation at the time VA changes its methods or standards for evaluating the veteran's particular disability or disabilities faces a possible reduction in his or her rating if the disability is re-evaluated under the new method or standard. This possibility may discourage disabled veterans from seeking re-evaluation even when they actually should be receiving a higher rating as a result of the change. This potential impact also may discourage VA from making certain changes likely to result in reductions for a large number of current recipients.

For example, a recent change in the technique for evaluating hearing loss theoretically could result in either reducing or increasing the rating for a particular veteran. In order to avoid discouraging veterans from seeking re-evaluations, VA's benefits manual (M21-1, paragraph 50.13b) instructed claims adjudicators to ignore rating reductions that resulted from changed standards or methods of evaluation. However, VA's General Counsel issued an opinion (Op. G.C. 11-88), dated October 27, 1988, which stated that VA lacks the authority "to protect ratings assigned under superceded criteria". The General Counsel's interpretation that VA does not have administrative authority to make prospective-only adjustments in the rating schedule precludes such action unless Congress provides explicit statutory authority.

Committee bill

The Committee bill would allow VA to implement changes in the rating schedule in a prospective manner, thus avoiding a reduction in the rate that veterans are receiving at the time of any such change.

In the Committee's view, the hearing-loss example noted above is an excellent example of when VA should exercise the authority to apply a technological change in the rating schedule only prospectively. Hearing loss often is the result of a degenerative disease that inevitably leads to increased disablity. Most veterans with hearing loss should seek periodic re-evaluation, as their condition worsens, in order to ensure that they are receiving the full compensation to which they are entitled. Yet some veterans may avoid going in for re-evaluation because they fear receiving a reduced rating under the new evaluation methods.

At the Committee's May 18 hearing, VA and all other witnesses who testified on this provision supported it.

Cost: According to CBO, the enactment of section 102 would entail no significant costs.

Part B—Radiogenic Disabilities

Extension of Presumption of Service Connection for Certain Radiation-Exposed Reservists

Section 111 of the Committee bill, which is derived from section 102 of S. 2100 as introduced, would amend section 312(c) of title 38, effective May 1, 1988, to expand the presumption of service connection for radiation-exposed veterans to cover reservists who were serving on active duty for training or inactive duty training during on-site participation in a nuclear weapons test.

Background

In the Radiation-Exposed Veterans Compensation Act of 1988 (Public Law 100–321), Congress established presumptions of service connection for 13 cancers in the cases of veterans who, during their active-duty service, participated in specified radiation-risk activities, including on-site participation in an atmospheric nuclear weapons test.

Nothing in the legislative history of the 1988 law indicates that the Congress intended to exclude from eligibility under that Act those who were serving on active or inactive duty for training when they participated on-site in a radiation-risk activity.

However, even though a National Guard member or other reservist who incurs a disability in the line of duty during training is considered a veteran for title 38 purposes and is entitled to VA compensation for that disability if it is rated at 10 percent or more, a 1989 VA General Counsel opinion advised VA's Chief Benefits Director that the wording of the provision enacted in Public Law 100–321 does not cover reservists who were present at a weapons test. The General Counsel's opinion is technically sound, but the result, excluding from the benefit of these presumptions members of the Selected Reserve who were present at a test, clearly is inequitable.

Veterans service organizations and VA testified in support of the proposed legislation.

Committee bill

Section 111 of the bill would include active and inactive duty training within the definition of "active duty" for purposes of the presumptions for radition-exposed veterans.

Individuals who participated in radiation-risk activity while serving on active duty for training or inactive duty training, and their surviving families, clearly deserve the benefits that would become available as a result of this provision. All of the reasons Congress had for enacting the original measure apply with equal force to the reservists who were exposed to radiation from on-site participation in the Government's atmospheric nuclear weapons test program: The Government's deliberate exposure of service personnel; the Government's failure to warn participants of suspected health risks from the exposure; the Government's failure to provide adequate protection to the participants; the Government's failure to follow up systematically on the health of the participants; and the almost impossible burden that the individual faces in trying to prove that the disability bears some relationship to in-service experience—when these cancers often take decades to appear.

The Defense Nuclear Agency, which is responsible for keeping records of all personnel who participated in the United States atmospheric nuclear testing program, estimates that the total, combined number of on-site participants who were serving on active or inactive duty for training or as National Guard civilian technicians is approximately 2,000 people. Thus, the number who would be covered by this provision is less than 2,000, because it would not include any civilians.

Cost: According to CBO, the enactment of section 111 would entail estimated costs of $1 million in both budget authority and outlays in FY 1991 and total estimated costs of $5 million in both budget authority and outlays in FYs 1991–1995.

Expansion of List of Diseases Presumed to be Service-Connected for Certain Radiation-Exposed Veterans and Elimination of Latency-Period Limitations

Section 112 of the Committee bill, which is derived from section 2 of S. 2556, would amend section 312(c) of title 38, effective October 1, 1990, to (a) eliminate the requirement that, in order to be presumptively service connected for radiation-exposed veterans, the diseases listed in section 312(c) of title 38 become manifest within certain time periods, and (b) add to that list of presumptively service-connected diseases cancer of the salivary gland and cancer of the urinary tract.

Background

In general. The Radiation-Exposed Veterans Compensation Act of 1988, Public Law 100–321, represented a compromise between legislation that the House passed in H.R. 2616 and S. 1002, which the Committee favorably reported as title II of S. 9. The Senate passed the provisions of S. 9 in H.R. 2616 on December 4, 1987.

The Committee report accompanying S. 9 (S. Rept. 100–215, page 104) noted that that Senate bill relied heavily on the findings from the 1980 report of the National Academy of Sciences (NAS) Committee on the Biological Effects of Ionizing Radiation. That report, known as BEIR III, represented the best information available at that time on the cancer risks faced by individuals exposed to ionizing radiation.

In late December of 1989, the NAS released the newest report of the NAS committee, BEIR V. This report contains new and important analyses of the effects of radiation, based on recently conducted studies using newly developed methods of analysis. First, the researchers had available ten more years of information on the health status of the Japanese survivors of the atomic blasts. Second, a bi-national group of scientists developed a new way of measuring the doses received by individuals at various places in Hiroshima and Nagasaki, enabling scientists to adjust estimated exposures based on whether, for example, people were shielded by buildings. And, third, the NAS committee made use of new biostatistical techniques for analyzing the complicated array of available data.

At the request of the Committee on Veterans' Affairs, the Office of Technology Assessment reviewed BEIR V and found that "the information in the report is reliable and the analyses sound."

The BEIR V findings are very significant. The report estimates that lifetime excess cancer risk following low-level radiation exposure is three to four times greater than previously thought. This heightened concern about the health effects of low-level ionizing radiation supports the approach to compensation Congress adopted in Public Law 100-321.

Latency period. BEIR V shows that current latency-period limitations are no longer supportable. The report presents results from a statistical model of Japanese atomic-bomb survivors indicating that, although the leukemia mortality rate peaked within 10 years after fallout exposure, a statistically significant increased mortality rate "has persisted at a diminished level." BEIR V found that the increased risk of death persists much longer than previously suspected—perhaps indefinitely in the case of certain other radiogenic diseases. According to testimony submitted to the Committee by Dr. Arthur C. Upton, Director of the New York University Medical Center and chairman of the NAS committee, existing data do not define "the length of time that the risk of cancer remains elevated after irradiation." Based on this premise, Dr. Upton contends that limiting compensation to cancers which develop within a limited time period is "not appropriate."

Particular cancers. Cancer of the salivary gland is rare in the United States. National Cancer Institute data indicate an annual incidence of 1.2 cases per 100,000 U.S. males. BEIR V found a dose-dependent increase in salivary-gland cancer in Japanese atomic-bomb survivors that indicated "relatively high" susceptibility of salivary glands to radiation-induced carcinogenesis.

Urinary-tract cancers are more common. For example, the annual incidence rate for urinary bladder cancer is 6.1 per 100,000 U.S. males and the incidence of kidney cancer is 4.6 per 100,000 U.S. males. BEIR V data demonstrate notable associations between bladder and kidney cancer and radiation exposure. The data show an especially strong, dose-dependent connection between radiation and bladder cancer.

These provisions in the Committee bill received general support from VA and no opposition at the Committee's May 18 hearing. The National Association of Radiation Survivors recommended inclusion of all cancers suggested as radiogenic in the BEIR V report.

Committee bill

Section 112 of the Committee bill would eliminate the requirement that, in order to be presumptively service connected for radiation-exposed veterans, the diseases listed in section 312(c) of title 38 become manifest within certain time periods and add to the list of presumptively service-connected diseases cancer of the salivary gland and cancer of the urinary tract.

Section 112 does not propose to add certain other diseases that BEIR V indicates could be radiogenic. These were omitted for two reasons. First, the strength of the association with radiation exposure generally was lower or not significantly higher than for the diseases included in the bill. Second, the number of cases of the omitted diseases that might be radiation-related is extremely small compared to the number of cases that are most likely related to other risk factors, such as smoking or diet.

The standard the Committee has applied in making the distinctions reflected in the Committee bill is to include presumptions of service-connection for any disease shown to be strongly associated with radiation and which has not been shown to be strongly associated with any other risk factors. This is the same standard applied in drafting the Senate bill that became Public Law 100-321. (See the *Congressional Record* of April 25, 1988, page S 4639.)

The Committee's goal is to continue to ensure that the Government's response to the health problems of veterans who were exposed to ionizing radiation during their service takes into account the latest scientific knowledge about the effects of ionizing radiation, while giving these veterans the benefit of reasonable doubt.

The Committee believes that BEIR V provides ample support for adding these two diseases and eliminating the latency-period restrictions in current law.

Cost: According to CBO, the enactment of section 112 would entail costs of $6 billion in budget authority and $5 million in outlays in FY 1991 and total estimated costs of $56 million in budget authority and $55 million in outlays in FYs 1991-1995.

Adjudication of Claims Based on Exposure to Ionizing Radiation

Section 113 of the Committee bill, which is derived from section 3 of S. 2556, would (a) require the Secretary, in consultation with the Secretary of Defense, to identify at least three military activities in each of the next four years that involved exposure of servicemembers to radiation, considering the number and level of exposure of the participants, but which are not "radiation-risk activities" under section 312(c) of title 38; (b) require the VA Advisory Committee on Environmental Hazards to evaluate, and make recommendations concerning, whether participation in these activities identified by the Secretary resulted in an opportunity for exposure comparable to exposure from a radiation-risk activity as defined in current law (participation in the nuclear-weapons test program or the post-war occupation of Hiroshima or Nagasaki); (c) require the Secretary to list each identified activity, unless the Advisory Committee report and other credible scientific evidence demonstrate that participation did not result in exposure comparable to exposure from a radiation-risk activity; and (d) make all activities so listed by the Secretary subject to the scientific review, regulatory, and adjudication procedures of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Public Law 98-542).

Background

Public Law 100-321 provides VA service-connected death benefits to survivors of veterans who have died from certain radiogenic diseases and have participated in "radiation-risk activities" defined in section 312(c) of title 38.

Reputable scientists, including some of those involved in the BEIR V report, recently have raised questions about many types of activities not covered by current law that might expose servicemembers or members of the general population to an increased risk of certain diseases, primarily cancer.

For example, an article in the March 1, 1990, *New York Times* reported that independent measurements of radiation received by flight crews on commercial (and thus, presumably, military) aircraft exceed some federal radiation standards. The data, presented to the aviation subcommittee of the Society of Automotive Engineers aeronautical section, confirmed an estimate by the Federal Aviation Administration last year that some pilots and flight attendants absorb dangerous levels of ionizing radiation.

The Committee also has received expressions of concern from veterans who might have been exposed to radiation during their service aboard United States Navy ships that took part in the disposal of radioactive waste and from veterans who served aboard nuclear submarines.

In a June 15, 1990, letter to Chairman Cranston, Deputy Secretary of Veterans Affairs Anthony J. Principi stated that the VA Advisory Committee on Environmental Hazards plans to review current standards defining radiogenic diseases and radiation-risk activities. The letter concerned a widow who was denied survivors benefits even though her husband had participated in the disposal of radioactive waste during service in the Armed Forces and his death was attributed to a disease included in the 1988 law. VA's reasoning was that, since participation in radioactive-waste disposal is not a "radiation-risk" activity under the 1988 law, VA has no basis upon which to grant benefits to the veteran's spouse.

The new data in BEIR V showing increased cancer risks even at low levels of exposure—as noted above in the discussion of section 112 of the Committee bill—strongly suggest the need to re-examine many types of activities involving radiation exposure levels previously considered safe.

Although there is not yet sufficient evidence of an association between radiogenic cancers and these other activities to extend the coverage of section 312(c) of title 38 to include participants in the activities, these activities should not be ignored.

Section 3 of S. 2556 addressed these concerns by requiring VA to examine military activities that involved exposure to ionizing radiation but are not considered a "radiation-risk" activity under current law. The Administration objected to section 3 of S. 2556, primarily based on practical difficulties of implementing the review procedure for other activities.

Committee bill

In order to address concerns raised by the Administration, the provision in the Committee bill has been revised to require the Secretary to consider, under the mechanism established by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984 (Public Law 98–542), activities that involved exposure to radiation. In addition, the provision no longer would require the Secretary to examine all other activities immediately after enactment.

Section 113 now would require the Secretary to identify at least three such activities for each of the next four years and would provide a two-step review of each identified activity. In the first step, the Advisory Committee would determine whether participation in the activity resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in the nuclear test program or the occupation forces in Hiroshima or Nagasaki. The second step would subject certain of the identified activities to the scientific review, regulatory, and adjudicatory procedures of the 1984 law. The Committee believes that this is a manageable, as well as necessary and worthwhile, task for the Department.

Cost: According to CBO, the enactment of section 113 would entail no significant costs.

Part C—Agent Orange Exposure and Vietnam Service

Presumption of Service Connection for Certain Veterans Who Served in Vietnam

Section 122 of the Committee bill, which is derived from sections 2 and 3 of S. 1153 as passed by the Senate on August 3, 1989, and sections 802 and 803 of S. 13 as passed by the Senate in H.R. 901 on October 3, 1989, would amend section 312 of title 38 to establish presumptions, for purposes of VA compensation, that the following diseases are connected to military service in Vietnam: chloracne (becoming manifest within one year after a veteran's last service in Vietnam), non-Hodgkin's lymphoma (NHL), and soft-tissue sarcoma (STS). This provision would take effect on October 1, 1990.

Background

The Senate twice has passed legislation to provide compensation for Vietnam veterans suffering from NHL or STS, and a presumption of service connection for chloracne becoming manifest within one year after service. On August 3, 1989, the Senate passed S. 1153 after a motion to table the measure failed by a vote of 92–8. The Senate passed the same legislation again on October 3, 1989, as title VIII of S. 13 as incorporated into H.R. 901. The legislation also contained several other provisions that are designed to help resolve scientific questions about the health effects of veterans' exposure to Agent Orange and other herbicides used in Vietnam. The House did not act on S. 1153 or accept the same provisions as part of H.R. 901, which was enacted without the provisions on December 18, 1989, as the Veterans' Benefits Amendments of 1989 (Public Law 101-237).

The original legislation would have established a presumption of service connection for chloracne and a system of interim benefits—until April 15, 1992—for NHL and STS. The interim benefits could have been extended beyond their April 15, 1992, expiration date, or made permanent, through a joint resolution that would have received expedited consideration and on which debate would have been limited.

On March 29, 1990, the Centers for Disease Control released the Selected Cancers Study, which examined possible associations between service in Vietnam and six particular cancers. The study found that veterans who served in Vietnam are 50 percent more likely to incur NHL than similarly aged male veterans and non-veterans who did not go to Vietnam. The study found no association between Vietnam service and the five other cancers.

On the same day that CDC released its study, Secretary of Veterans Affairs Edward J. Derwinski announced that VA would grant service-connected disability benefits for NHL to veterans who served in Vietnam. This administrative action has an effect equivalent to establishing a statutory presumption for NHL.

On May 18, 1990, VA's Advisory Committee on Environmental Hazards concluded that it was "at least as likely as not" that exposure to Agent Orange can cause STS and recommended to Secretary Derwinski that VA grant service-connected disability compensation for STS. The Advisory Committee's consideration of this issue and recommendation to the Secretary were conducted under a procedure established by the Veterans' Dioxin and Radiation Exposure Compensation Standards Act of 1984 (Public Law 98-542), the legislation which also created the Advisory Committee.

On the same day the Advisory Committee made its recommendation, Secretary Derwinski announced that VA would grant service-connected disability benefits for STS to veterans who served in Vietnam.

Current VA regulations in section 3.311a(c) of title 38, Code of Federal Regulations, also provide service-connected benefits for chloracne becoming manifest within three months after completing service in Vietnam.

VA has announced it will pay benefits for NHL retroactively to the date on which a veteran or survivor filed a claim. The Secretary decided that VA will pay retroactive benefits for claims filed as early as the beginning of the Vietnam era, August 5, 1964, because the CDC study found that NHL was correlated with service in Vietnam, rather than any specific aspect of that service.

VA also will pay retroactive benefits for STS for claims filed as early as October 24, 1984. The decision to provide for service connection was based on a finding by the VA Advisory Committee on Environmental Hazards that STS is "at least as likely as not" related to exposure to Agent Orange. The Secretary chose the 1984 triggering date because it is the effective date of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, which created the legal mechanism under which the Advisory Committee and the Secretary considered STS and VA eventually will provide disability compensation for the disease.

No current statutory or administrative presumptions of service connection provide for retroactive benefits. For example, VA has never paid retroactive benefits under its chloracne regulation which, like VA's recent action on STS, is based on an association with exposure to Agent Orange. The statutory presumptions in section 312(c) of title 38 for radiation-related diseases apply only to claims filed after the May 20, 1988, effective date of that law. When new scientific evidence revealed an association between cardiovascular disease and amputations, leading to an administrative presumption of service connection, VA did not authorize or award retroactive benefits. The presumptions in section 312(b) of title 38 for certain diseases suffered by ex-prisoners of war also applied only prospectively from the date of enactment of the various laws codified in that section.

Committee bill

Section 122 of the Committee bill would establish statutory presumptions that chloracne (becoming manifest within one year after a veteran's last service in Vietnam), NHL, and STS are connected to military service in Vietnam, thus codifying in title 38 the actions that VA has taken or is taking to provide for service connection, and extending the presumptive period for chloracne from three months to one year.

The effective-date provision is intended not to interfere with—but also not to express approval of—the action of the Secretary in giving NHL and STS preferential treatment by establishing retroactive effective dates of the regulations. The VA General Counsel's office has advised the Committee that this provision, if enacted, would not affect VA's exercise of the authority that VA claims it has to award benefits retroactively for NHL and STS.

Each of these diseases is associated with military service in Vietnam, exposure to Agent Orange in Vietnam, or both, according to reputable scientists and scientific organizations. The CDC study, the recommendations of the VA Advisory Committee, and numerous studies of chloracne and other diseases possible associated with exposure to Agent Orange constitute an ample scientific foundation for granting these three presumptions. For further discussion of this issue, see the Committee's report accompanying S. 1153 (S. Rept. No. 101-82).

Cost: According to CBO, the enactment of section 122 would entail no cost, compared to CBO's June 1990 baseline. Compared to the earlier, February 1990 baseline, enactment of this section would entail estimated costs of $50 million in budget authority and $48 million in outlays in FY 1991 and total estimated costs of $318 million in budget authority and $313 million in outlays in FYs 1991-1995. The difference in the cost estimates is attributable to the fact that the Secrtary's actions granting service connection for NHO and STS occurred between the February and June CBO baselines.

Other Provisions Relating to Agent Orange Exposure and Service in Vietnam

Sections 123 through 131 of the Committee bill are derived without substantive change from sections 4 through 12 of S. 1153, the proposed "Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1989". The Committee bill does not include sections 4(d) and (e) of S. 1153, which are related to the interim-benefits provision in section 2 of S. 1153 that have been superceded by section 122 of the Committee bill.

The background, descriptions, and explanations of sections 4 through 12 of S. 1153 are set forth in the Committee's report on that measure (S. Rept. No. 101-82, pages 24-36 and 40-54), as are the additional views of Senators Murkowski, Simpson, and Thurmond on that measure (*id.*, pages 60-64).

Cost: CBO estimates that the enactment of sections 123 and 131 would entail costs of $17 million in budget authority and $15 million in outlays in FY 1991 and a total of $39 million in both budget authority and outlays in FYs 1991-1995.

TITLE II—HEALTH CARE

Part A—Mental Health

Sections 201 through 205 of the Committee bill are derived from sections 201, 202, 204, 205, and 207, respectively, of S. 13 as reported by the Committee on September 13, 1989, without substantive changes (except for the deferral by one year of certain dates and fiscal years in light of the fact that the anticipated date of enactment is now one year later).

The background, descriptions, and explanations of these provisions are set forth in the Committee's report accompanying S. 13 (S. Rept. No. 101-126, pages 100-09 and 112-49), as are the additional views of Senators Murkowski, Simpson, and Thurmond on section 201 (*id.* at pages 494-96), relating to care for post-traumatic stress disorder, and of Senators Murkowski and Simpson on section 202 (*id.* at pages 492-93), relating to Vet Center eligibility.

Part B—General Health

Eligibility for Prosthetic Devices and Certain Other Medical Items

Section 211 of the Committee bill, which is derived from section 202 of S. 2100 as introduced, would amend section 612 of title 38 to give VA the authority in certain cases to provide veterans who are receiving non-service-connected outpatient care with wheelchairs, prosthetic devices, special clothing for users of prostheses, and certain other supplies and services. Specifically, this provision would authorize the furnishing of such medically necessary items as part of outpatient care necessary either to obviate the need for hospital admission or in preparation for hospital admission. This authority would become effective on the date the Secretary submits to the Committees a written determination that implementation of the authority would not result in or contribute to substantial delay in the furnishing of prosthetic items in connection with the treatment of disabilities that are service connected or in the denial of such items in connection with the treatment of such disabilities.

Background

Legislation originally enacted in Public Law 93-82 and now codified in section 612(a) (2), (4), and (5)(A) of title 38 generally authorizes VA to provide veterans with such outpatient care for non-service-connected disabilities as is necessary to obivate the need for hospital admission (known as "obviate care"). At the time that authority was established, an existing limitation in the law which precluded VA from providing wheelchairs, prosthetic devices, and similar appliances as part of pre-hospital care to non-service-connected veterans was extended to preclude these veterans from receiving these items when they are receiving obviate care. No such restriction applies to the care and treatment of these veterans while they are receiving inpatient care.

(The restriction does not apply to veterans who are eligible for comprehensive outpatient care, primarily those with service-connected disabilities rated at 50 percent or more, former prisoners of war, World War I veterans receiving VA non-service-connected disability pensions who are in need of regular aid and attendance.)

Because of this limitation, VA is generally prohibited from furnishing to veterans receiving outpatient care non-service-connected disabilities based on the obviate standard prosthetic devices and various other medical items which could prevent the need for future in-patient hospital care. For example, under current law, such a veteran cannot be furnished a corrective shoe for a non-service-connected foot ulcer even though the lack of the shoe may lead to later hospitalization and possible amputation of the foot. Likewise, this restriction on non-service-connected care prevents VA from providing an amputee who has a stump abrasion a liner for or simple repairs to, his artificial limb to prevent further breakdown and subsequent hospitalization. Similarly, a paralyzed wheelchair-bound veteran prone to bed sores cannot be provided an appropriate eushion to relieve pressure areas.

At the Committee's June 14 hearing on health-care issues, this provision received general support from the veterans service organizations. VA's testimony did not address the merits of the provision, but rather recommended that any such changes take place as part of a comprehensive review of all laws governing the provision of prosthetic devices.

Committee bill

Section 211 of the Committee bill would not authorize VA to provide prosthetic devices and other medical supplies to all veterans. Rather, it would, upon a determination by the Secretary that the particular items are "necessary", permit VA to provide them in preparation for—or to obviate the need for—hospitalization. Some of the most commonly requested prosthetic items, such as eyeglasses and hearing aids, would not be furnished under this new authority because they are not needed in order to obviate the need for, or in preparation for, inpatient care.

It is the Committee's expectation that the cost increases this proposal would bring to VA's Prosthetic Service budget would be offset substantially by improvements in outpatient care resulting in reduced hospital admissions for conditions that, in the absence of the provision of a prosthetic or other medical item, would otherwise deteriorate to the point at which a costly surgical procedure is required.

The Committee notes that the authority that would be granted under this provision would become effective only after the Secretary makes a determination that implementing such authority would not result in or contribute to the denial of or substantial delay in the furnishing of prosthetic items in connection with the treatment of disabilities that are service connected. The Committee expects that, upon enactment, the Secretary would act promptly to take appropriate steps so as to determine whether implementation of this authority would have such effects.

Cost: CBO estimates that enactment of section 211 would entail costs of $7 million in budget authority and $6 million in outlays in FY 1991, and total costs of $35 million in budget authority and $34 million in outlays in FYs 1991–1995.

Eligibility for Outpatient Dental Care

Section 212 of the Committee bill, which is derived from section 3(a)(4) of S. 2456 as introduced at the request of the Administration and similar to section 220 of S. 13 as reported by the Committee, would amend section 612(b)(1) of title 38, to (a) authorize the provision of medically necessary non-service-connected outpatient dental care to veterans in preparation for hospitalization, and (b) authorize the provision of medically necessary non-service-connected outpatient dental treatment to veterans currently active in a VA treatment program.

Under existing law, VA is generally authorized to provide medical services needed to prepare a veteran for hospital admission. However, a statutory limitation on the provision of outpatient dental care precludes VA from furnishing medically-required preadmission dental procedures. Therefore, VA often hospitalizes a veteran in order to perform dental work which is necessary prior to providing other medical procedures. For example, a dental infection must be treated before VA performs surgical implantation of certain prostheses.

Additionally under existing law, VA may provide outpatient dental services necessary to complete dental treatment begun while the veteran was hospitalized, but VA lacks the authority to provide such outpatient dental care for other dental problems which may compromise the veterans health. For example, VA may not continue to provide a cancer or AIDS patient with needed outpatient dental care. This lack of authority is costly and inefficient because it may cause expensive hospitalization to ensure that medically-at risk patients receive needed dental care.

Cost: According to CBO, enactment of this section would entail no significant cost.

Increase in Maximum Limitations on Home Health Services

Section 213, which is derived from section 203 of S. 2100 as introduced, would increase the maximum amount of a one-time grant from $2,500 to $5,000, for structural home modifications as part of home health services for the treatment of a service-connected disability and from $600 to $1,200 the ceiling for such grants for the treatment of a non-service-connected disability.

Background

Under section 617(a) of title 38, VA is authorized to furnish, as part of medical services, "such home health services as the Secretary determines to be necessary or appropriate for the effective and economical treatment of a veteran". Under the Home Improvements and Structural Alterations (HISA) grant program, VA is authorized to provide one-time grants to pay for improvements to the homes of certain very seriously disabled veterans to assure the continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities. Examples of home improvements are the construction of temporary ramps to permit access to the house by wheelchair, the installation of electrical adjustments to permit the operation of dialysis equipment, and the installation of air-conditioning equipment or winterizing insulation in order to provide consistent temperature control for the neurological consequences of certain disabilities.

This authority, first established in 1973 by Public Law 93-82, was amended in 1976 in Public Law 94-581 to address two concerns. First, the kind of projects covered by the home health services authority was clarified so as to include permanent improvements which provide access to the home or bathroom such as wheelchair ramps, improved paths and driveways, wider doors, and grip bars. Second, under the initial authority, there had been no distinction between the extent of the structural home modifications available to seriously disabled veterans who are being treated for service-connected disabilities and those who are not. In 1976, Public Law 94-581 created two categories of home improvements necessary and appropriate for the effective or economical treatment of seriously disabled veterans: structural home modifications of a minor nature in connection with the treatment of non-service-connected disabilities with a cost ceiling of $600 and more extensive structural home modifications in connection with service-connected disabilities with a cost ceiling of $2,500.

These limitations on the grant amounts have not been increased since 1976. The cost of home modifications covered by HISA has more than doubled since that time. For example, according to estimates provided by a Washington D.C. area contractor, the hourly wage for certain carpenters increased from $14.69 to $30.00. Figures obtained from two medical equipment suppliers indicate that the purchase price for a straight stairway lift has risen from $1,570 in 1976 to $3,860 in 1990; an increase of 146 percent. The price of a curve stairway lift has risen from $2,775 in 1976 to $7,610 in 1990; a 174-percent increase. In order to provide a level of real assistance equivalent to that established in Public Law 94-581, the Committee believes that the ceilings on such HISA grants should be doubled for both categories of seriously disabled veterans.

At the Committee's June 14 hearing, VA officials opposed this provision on the grounds that such increases in the ceilings on these one-time grants were unnecessary. VA stated that it was "unaware of evidence that the Home Improvements and Structural Alterations grants are insufficient to meet the needs of eligible veterans." However, the five veterans service organizations who presented testimony on this issue supported the provisions, citing increases in both Consumer Price Index and building costs.

Committee bill

Section 213 would amend section 617(b) of title 38 to increase from $2,500 to $5,000 the maximum amount of a one-time grant for structural home modifications as part of home health services furnished in the treatment of a service-connected disability and from $600 to $1,200 the maximum for such grants in connection with the treatment of a non-service-connected disability.

Cost: CBO estimates that enactment of section 213 would cost $2 million in both budget authority and outlays in FY 1991.

Contract Authority for Alcohol or Drug-Abuse Treatment

Section 214 of the Committee bill, which is derived from section 4 of the Administration-proposed bill, S. 2456, would amend section 620A of title 38 to make permanent the program of community-based contract alcohol and drug treatment under that section, which currently is scheduled to expire on September 30, 1991.

Background

Prior to the enactment of Public Law 96-22 on June 13, 1979, VA was not authorized to contract for the residential care of veterans suffering from alcohol or other drug dependence or abuse disabilities. However, the ability to place alcohol or drug dependent patients near their places of residence and employment, as well as provide such patients with ongoing therapy as needed, had been an objective of the VA substance-abuse treatment programs for some time. In the committee report accompanying S. 7, legislation from which the contract authority set forth in Public Law 96-22 was drawn, the Committee stated:

> [I]t is imperative, in the Committee's view, that VA programs be expanded so that the virtually epidemic proportions of alcoholism and alcohol-related problems among veterans may be treated in the most effective and economical way to secure the maximum possibility of recovery and rehabilitation of veterans suffering from this disability.
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> The Committee recognizes the value of offering different modes of treatment so that treatment may be tailored to an individual's special needs and circumstances so as to enhance his or her chances of recovery. Although inpatient treatment such as that currently provided by the VA is essential in certain cases, there are many cases in which alternative types of care, such as halfway-house care, would be more effective, less restrictive, and far less costly.
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> Thus, the Committee urges the VA to contract with a broad range of facilities to demonstrate the comparative effectiveness of treatment and rehabilitation in different community-based settings. In addition to halfway houses, therapeutic communities, and psychiatric residential treatment centers, which are specifically mentioned as eligible contract facilities in section 104, the VA would be authorized to contract with a variety of other community-based facilities which are capable of providing care and treatment and rehabilitation and rehabilitation services to veterans with alcohol or drug dependence or abuse disabilities in the geographic vicinity of the veteran's usual residence. (S. Rept. No 96-100, pages 36-37)

Public Law 96-22 included a requirement that VA report to the Congressional Committees on Veterans' Affairs not later than March 31, 1983. That deadline was extended by Public Law 97-251 to not later than March 31, 1984. That report, submitted to the

Committees in May 1984, contained findings that, when a 9-month follow-up to contract care was conducted, 67.4 percent of those veterans who had completed the contract residential treatment program were abstaining from the use of any alcoholic beverages and 60.5 percent of those who had dropped out of such contract care before completion of treatment were maintaining sobriety. VA also found that, among those who had completed the contracted community program, 61 percent had improved their employment status, their earned income had increased 71.2 percent, and 33 percent fewer repeat detoxifications were required. VA concluded, "The modest initial cost of contracted community-based care was quickly followed by improved health, adjustment, and decreasing medical costs."

Since the program's inception in 1979, VA advises that approximately 57,000 veterans have been placed in community-based programs, and in FY 1989, there were 4,500 veterans placed under 350 contracts at a total cost to VA of $5.4 million.

Committee bill

The Committee believes that the contract community-based care for drug and alcohol disorders is an important element of the Department's overall effort to address the serious problems of substance abuse among veterans and that it has demonstrated effectiveness in providing needed services to veterans. The Committee agrees with VA that the contract authority should be made permanent. The current-law requirement that the Department issue evaluation reports on the contract community-based care program by February 1, 1993, and March 31, 1998, which S. 2456 would repeal, would be maintained by the Committee bill. In the Committee's view, VA's evaluation of this program could contribute substantially to the body of knowledge regarding the effectiveness of various modes of alcohol and drug treatment.

Cost: CBO estimates that enactment of section 214 would entail costs of $8 million in budget authority and $7 million in outlays in FY 1991, and total costs of $45 million in budget authority and $43 million in outlays in FYs 1991–1995.

Extension of Authority To Make Contracts and Grants to the Veterans Memorial Medical Center, Republic of the Philippines

Section 215 of the Committee bill, which is derived from section 5 (a) and (c) of S. 2456 as introduced at the request of the Administration, would amend section 632 of title 38 to extend for an additional five years, through September 30, 1995, (a) VA's authority in section 632(a) to contract with the Veterans Memorial Medical Center (VMMC) in Manila for the care and treatment of certain U.S. veterans in the Philippines, and (b) the authorization in section 632(b) of annual appropriations of $1 million for grants to assist the VMMC in equipment purchases for and the rehabilitation of the VMMC, with a requirement that $50,000 would be earmarked for education and training of VMMC personnel.

Background

Section 1502 of Public Law 100-687, enacted November 18, 1988, provided for a one-year extension of the above mentioned authorities and increased from $500,000 to $1 million the authority to provide grants to the VMMC. This law required VA to report by February 1 of 1989 and 1990 on the use by the VMMC of the grant monies during the preceding fiscal year. Finally, Public Law 100-687 required VA to report to the Committees by May 1, 1989, on health-care services to U.S. veterans in the Philippines. Detailed information on the history of VA health care programs in the Philippines can be found in the Committee's report accompanying S. 2011 (S. Rept. No. 100-439, pages 139-143).

The VA's report of February 1, 1989, stated that fiscal year 1988 obligations totaled $541,958 with $279,221 being carried over to fiscal year 1989. The funds were used for, among other things, roof waterproofing, water-systems replacement, boiler repairs and a telephone system replacement. VA's report of February 23, 1990, stated that fiscal year 1989 obligations totaled $640,152 with $139,069 being carried over to fiscal year 1990. These funds were used for, among other things, renovation of a ward and installation of an emergency power system and to repair and ship equipment to VMMC which had been excessed by VA medical centers in the United States.

Also, pursuant to this law on March 23, 1990, VA submitted its report to the Congress entitled "Study of Health Care for U.S. Veterans in the Republic of the Philippines". The report, which was prepared by the Veterans Health Services and Research Administration Manila Site Visit Team, concluded that the quality of care provided to U.S. veterans is satisfactory although the physical environment of the VMMC is "severely deteriorated and needs to be improved". The site team noted that many buildings systems were inoperable, including the fire alarm, light fixtures, hot water systems, elevators, the nurse call system, and water wells. The site team concluded that the most viable solution should be a limited renovation of VMMC space and utility systems.

Committee bill

In addition to extending the authorities for five years to contract for care at the VMMC and to provide grants, in light of the information contained in this report, the Committee bill would maintain the $1 million annual grant authorization which was approved as part of Public Law 100-687 and grant the Administration's request for the earmaking of education and training funds.

Costs: According to CBO, the enactment of section 215 would entail estimated costs of $1 million in budget authority and less than $500,000 in outlays in FY 1991 and $5 million in budget authority and $4 million in outlays in FY's 1991-1995.

Child-Care Centers

Section 216 of the Committee bill, which is derived from section 6 of S. 2456 as introduced at the request of the Administration, would amend section 4209(c) of title 38 to authorize VA medical centers to convert space at their facilities for the purposes of establishing child-care centers without requiring reimbursement for the cost of conversion from the Veterans Canteen Service.

Section 412 of Public Law 100-322, enacted on May 20, 1988, added to Chapter 75 of title 38 a new section 4209 which requires the Secretary, to the extent the Secretary determines that it is in the best interest of the VA and practicable to do so based on the demand for such care, to provide for the operation of child care centers at VA facilities. Section 4209 further provides for the Veterans Canteen Service (VCS) to carry out VA's child-care program and set forth certain criteria and specifications for the establishment and oepration of child-care centers. Under current law, VA may provide space at no cost but must obtain reimbursement for the costs of converting for child-care use.

The VCS has established one child-care center under this new authority at the VA Medical Center in Danville, Illinois.

According to testimony presented before the Committee at its June 14 hearing, VA's ability to establish additional child-care centers has been stifled by the requirement that the VCS reimburse the medical center for the cost of converting the space. According to VA testimony at a House Veterans' Affairs Committee hearing on July 11, 1990, the VCS Revolving Fund lacks resources to pay for costly start-up costs.

In order to facilitiate the establishment of additional child care centers, the Committee bill would authorize VA medical centers to convert space to be used for child care centers without requiring the VCS to reimburse the medical center for those costs.

Cost: According to CBO, the enactment of section 216 would entail no significant costs.

Extension and Expansion of Authority To Sell Acquired Properties for Occupancy by Homeless and Certain Other Veterans

Section 217(A) of the Committee bill, which is identical to section 402(a) of S. 2100 as introduced, would extend for 3 years, through October 1, 1993, VA's authority to sell acquired property to public or non-profit entities to assist homeless veterans and their families in acquiring shelter and would expand VA's authority in this area to permit the sale of such property for use as transitional residences for veterans receiving treatment for substance abuse or mental health problems.

Background

Under section 9 of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Public Law 100-198), VA is authorized to sell to States, State agencies, or non-profit organizations property acquired as a result of a default on a loan made or guaranteed by VA under the VA home loan program if the property is to be used solely as a shelter for homeless veterans and their families. The sale price may be less than the full market value; the law provides that the sale shall be "for such consideration as the [Secretary] determines is in the best interests of homeless veterans and the Federal Government." The authority provided under this law is scheduled to terminate on October 1, 1990.

As of July 6, 1990, two properties had been sold under the Public Law 100-198 authority to eligible groups for use solely as shelters primarily for homeless veterans and their families. In Pennsylvania, the Pennsylvania Department of the American Legion formed a non-profit corporation, The American Legion Housing for Homeless Veterans Corporation, which purchased from VA in July 1988 a four-unit VA-acquired property for $20,000 and, in conjunction with the Highland VA Medical Center in Pittsburgh, provides housing for 10 homeless veterans. In Washington State, the Seattle Vietnam Veterans Leadership Program purchased from VA for $28,000 on December 21, 1989, a large, old three-story home which is being renovated to expand the useable floor space and provide shelter to six homeless veterans.

In response to an inquiry the Committee made to VA regarding what aspects of the program precluded wider participation and what steps could be taken to facilitate and encourage additional sales under the program, VA directed its field stations to survey eligible homeless providers. VA stations reported contact with local offices of 967 community-based agencies and non-profit organizations. More than half of those contacted indicated to VA that they were insufficiently funded to purchase real estate incident to their public assistance programs.

In a White Paper transmitted to the Committee on January 5, 1990, VA indicated that it was administratively revising the property selection and pricing criteria for the program so that the number of eligible properties would be increased approximately fourfold and the amount of the sale price would be 50 percent, rather then 75 percent as at present, of market value. With these changes and the extension that would be provided under this legislation, the Committee is hopeful that this program will be utilized to a far greater extent during this fiscal year and the following three fiscal years to assist homeless veterans and their families.

The housing and other needs of homeless persons are discussed in detail in the discussion of section 218 of the Committee bill.

VA expressed its support for this provision at the Committee's June 14 hearing, as did the veterans service organizations.

Committee bill

Section 217(a) of the Committee bill would extend through October 1, 1993, the authority provided by section 9 of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act and would expand that authority so as to permit the sale of properties to the same types of entities for use as transitional housing for veterans who, within the most recent 90-day period, have been furnished care and treatment and rehabilitative services by the Secretary for alcohol or drug dependence or abuse disabilities or mental illness disabilities.

This provision also would extend for an additional three years the reporting requirements on the activities carried out under this expanded authority, with additional reports to be transmitted by the Secretary to the Congress on March 1 of 1991, 1992, and 1993.

With respect to the provision in section 217(a) of the Committee bill that would allow acquired property to be sold at a discount to non-profit organizations for use as transitional housing for veterans recently furnished alcohol or drug services or mental-health care by VA, it is widely recognized that the medical systems that currently exist for the treatment of substance-abuse disorders often lack adequate follow-up care to the initial detoxification and rehabilitation periods of treatment. In VA programs, veterans with substance-abuse disorders often undergo a 28-day rehabilitation program, after which they are eligible for treatment at VA's expense in community-based privately-operated halfway houses for a period of up to 90 days. Among the problems that recovering alcohol- and drug-addicted veterans face upon completion of a detoxification and rehabilitation program is finding a drug-and-alcohol-free environment in which to live and continue their rehabilitation. Additionally, many of those with longstanding addictions are homeless or on the verge of homelessness.

The Committee believes that authorizing VA to sell repossessed properties to non-profit groups which agree to use the properties as either shelters for homeless veterans and their families or transitional housing for veteran patients who are struggling to overcome their substance-abuse or mental-health problems is an appropriate use of hard-to-sell acquired residential properties to address serious needs among our Nation's veterans.

Cost: CBO estimates that enactment of section 217(a) would entail no significant costs.

Transitional Group Residences for Veterans Recovering From Substance Abuse Disabilities

Section 217(b) of the Committee bill, which is derived from section 402(b) of S. 2100 as introduced, would establish a revolving fund from which loans not to exceed $4,000 could be extended to private non-profit groups for the purpose of establishing transitional group homes for veterans who are receiving or have received—within the prior 90 days—care for drug or alcohol abuse or addition.

Background

VA has vast expertise and experience in dealing with the treatment of drug and alcohol addiction and related conditions. In fact, VA is the single largest direct provider of substance-abuse treatment in the U.S., and the Committee believes that VA is particularly well-placed to be a leader in treatment efforts and modalities of care.

In FY 1989, VA furnished alcoholism treatment to more than 100,000 individual veterans on an inpatient basis—over 58,900 in 129 specilized alcoholism treatment units and another 41,500 on other VA inpatient units, such a general psychiatry. On an outpatient basis, VA handled almost 450,00 visits during FY 1989 for alcoholism treatment in 139 outpatient alcohol dependence treatment programs.

Also in FY 1989, VA's 53 Drug Dependence Treatment Programs provided treatment on an inpatient basis to 29,500 individual veterans with a wide variety of drug abuse and dependence problems, including opiate and cocaine dependency. VA statistics indicate that there were over 878,000 outpatient visits for drug dependence treatment. VA does not currently maintain statistics on the number of veterans who are treated for both alcohol and drug dependence, but such veterans are counted in either the drug treatment or the alcohol treatment category. VA's total expenditure on drug and alcohol treatment in FY 1989 was estimated to be $451 million, and the total expenditure in FY 1990 is estimated to be $524 million.

Furthermore, under section 620A of title 38, VA is authorized to contract with non-VA community-based halfway houses for rehabilitation services for veterans with substance-abuse problems. Under this authority, VA in FY 1989 placed over 4,500 veterans in nearly 400 community halfway houses for 60 to 90 days of care.

In view of VA's vast experience in substance-abuse treatment and its extensive existing health-care system, the Committee believes that VA can be instrumental in any efforts that the Government undertakes to improve and expand treatment to substance abusers.

However, there is one important aspect of substance-abuse treatment that is currently lacking in VA's—and often in State, local, and private—treatment programs, namely, a drug- and alcohol-free place for recovering veterans to stay upon discharge from treatment in a hospital or halfway-house program.

Recovery from substance abuse does not end when the alcoholic or addict walks out the door of initial treatment. It is only the beginning. For persons whose lives have been devastated by addiction to alcohol or drugs, there is often the need to rebuild the communication skills and work abilities that have been impaired by the addiction. Hospital treatment programs and participation in halfway house programs can help recovering persons relearn these skills and begin rebuilding their lives, but it is when these persons are outside of the hospital or therapeutic halfway house and on their own that the real test begins. The Oxford House model, in which recovering persons live together, make decisions together, help each other find work, and support themselves and each other without any public or private assistance except for the start-up rental and security deposits, provides an environment where the recovering addict lives with others with common experiences who can assist him or her in going forward.

Oxford House was the underlying model for section 2036 of the Anti-Drug Abuse Act of 1988 (Public Law 100-690), under which 31 States have set up revolving funds to be used for loans to establish recovery homes for groups of recovering substance abusers.

Since the first Oxford House was established in Silver Spring, Maryland, in 1975, it has demonstrated that a drug- and alcohol-free environment can be maintained by recovering alcohol abusers. Today there are 117 Oxford Houses throughout the Nation in 22 States and the District of Columbia—each chartered by Oxford House, Inc., a non-profit, tax-exempt corporation which acts as an umbrella organization for the national network of Oxford Houses, but all distinctly autonomous. Currently, there are 1,186 residents in these homes, and, since 1975, well over 3,000 men and women have been or are residents. According to Oxford House Inc., nearly 80 percent of the recovering individuals who become residents in an Oxford House do not return to using alcohol or drugs.

There are only three rules mandated by the chartering organization which all Oxford Houses are obliged to follow: (1) the house must operate using democratic procedures; (2) the group must be financially self-supporting; and (3) any resident who relapses into using alcohol or drugs must be expelled immediately. All other rules governing an individual house are made democratically by the members. A recovering individual is generally permitted to live in an Oxford House as long as he or she does not drink or use drugs and pays a proportionate share of the house expenses. The average stay is a little over a year, but some residents stay longer. There is no pressure on anyone in good standing to leave.

There are many therapeutic aspects built into the Oxford House model. The group residence allows the individuals in recovery the opportunity to determine their own living environments; it offers a supportive environment free of alcohol or drug use; and, most importantly, it reinstills pride and self-esteem in the residents, characteristics often in short supply among alcoholics and drug abusers. But Oxford House is only part of the recovery process. Residents are encouraged to participate in Alcoholics Anonymous and Narcotics Anonymous, and long-time residents often play vital roles in the further expansion of the Oxford House program.

At the Committee's June 14 hearing, Paul Molloy, chief executive officer of Oxford House, Inc., and a former Oxford House resident, testified as to the current need for a similar program in the veterans' community:

> More than 140 VA Hospitals have treatment programs that follow the traditional 28-day inpatient mode. Each of those hospitals has groups of veterans leaving an inpatient program each week. Wouldn't it make sense to group some of those individuals together, help them rent a house and help them start an Oxford House? The best way to assure that outcome is to establish the statutory mandate for them to do so and establish a revolving fund within VA that parallels the State Recovery House Revolving Fund. Such a fund would assure that Oxford Houses could be established close to the VA hospitals which would permit recovering veterans to live in a safe place close to aftercare treatment. Oxford House has helped each of the States establish their funds. We know that the availability of a loan to cover the first month's rent and security deposit on a house serves as a catalyst to permit recovering individuals to help themselves. We also know that each group which receives a loan will pay the money back so that others may use it.

All the veterans' service organizations testifying at the June 14 hearing expressed support for this provision. VA opposed the provision on the basis that it would be costly to administrate and that it would be funded from unobligated funds in the Canteen Service Revolving Fund, which VA asserted was inappropriate because that fund is unrelated to the program.

Committee bill

Section 217(b) of the Committee bill would encourage the establishment of group homes similar to those under Oxford House for veterans recovering from substance abuse. Specifically, on October 1, 1990, a revolving fund would be established to which a minimum of $100,000—and up to $1,000,000, as specified by the Secretary—would be transferred from VA's Canteen Service Revolving Fund.

Loans would be made from this revolving fund to groups of veterans who are receiving or have recently received from VA—directly or through contracts—treatment for substance-abuse disabilities. These loans would only be made to groups of veterans who agree that, as in the Oxford House model, the use of alcohol or any illegal drug in the house will be prohibited and result in the expulsion of the offending veteran. Also, following the Oxford House model, the costs of the house, including fees for rent and utilities, would be paid by the veteran residents of the house and the veteran residents would, through a majority vote, otherwise establish policies governing residence in the house, including the manner in which applications for residence are approved. The residence would be maintained only for veterans and would house at least six veterans. The Committee bill differs from the Oxford House model in that the stay is intended to be transitional.

The amount of the loan could not exceed $4,000, an amount that would allow a group of veterans to secure a lease on a house and pay the necessary security deposit and move-in costs. The veteran residents of the house would have to make payments—estimated to be about $175 per month based on the Oxford House experience—for 24 months to the revolving fund. A reasonable penalty would be assessed for each failure to pay such periodic installments by the date specified in the loan agreement. As money is repaid to the fund, other loans could be extended for the establishment of more group homes. This is the same manner in which loans are administered under the State programs called for under section 2036 of the Anti-Drug Abuse Act of 1988.

The success of the Oxford House model in communities throughout the country is attributed by the founders of the model to the self-run, self-help nature of the residences. By providing loans of not more than $4,000, the program envisioned by the Committee bill would follow the self-help philosophy of Oxford House. The success of a residence and of the veterans residing there would depend on their upholding their obligations both under the terms of the loan from VA and the lease agreement with the owner of the property. The $4,000 amount is intended only to allow a group of veterans to secure a lease on a suitable residence and move in. The requirement that at least six veterans reside in the group home is included to ensure that the monthly rental cost per veteran would not be prohibitively high. Oxford House has advised the Committee that there has never been a situation in which fewer than six persons have started an Oxford House.

In order to make this program easily workable, this provision of the Committee bill also would authorize the Secretary to enter into contractual agreements with private non-profit corporations for the purpose of collecting payments on the loans made from the revolving fund and then remitting the payments to VA. This is a function that the Oxford House often fulfills—for a charge of $830 per month for an entire program in a State—in the State programs. The Committee believes that this aspect of the provision would allow VA the same flexibility in administering the revolving fund that States have in administering revolving funds established pursuant to section 2036 of the Anti-Drug Abuse Act of 1988.

The Committee is very encouraged by what it has learned about the Oxford House model and expects that in implementing this provision VA would consult the people who developed the model and who are instrumental in its operation.

Cost: CBO estimates that section 217(b) would entail no significant costs.

Expanded Services for Homeless Veterans

Section 218 of the Committee bill contains an amendment offered by Senator Cranston, derived from sections 1-3 and 9-11 of S. 2128, to require VA medical centers or regional benefits offices, in coordination with groups involved in serving homeless persons, to conduct assessments of the needs of homeless veterans living within the areas served by those centers or offices; develop plans to address the needs identified as not being met by the existing network of VA and other programs; establish a 3-year, $4.5 million pilot program at up to 15 sites at which VA would be authorized to contract for domiciliary care for homeless veterans; extend VA's Homeless Chronically Mentally Ill (HCMI) Veterans and Domiciliary Care for Homeless Veterans (DCHV) programs thorugh FY 1993; and increase the authorizations of appropriations for the HCMI and DCHV programs.

Background

The Committee recognizes that there are no adequate "objective" measures of the incidence of homelessness. The Census Bureau has stated that the homeless count that it conducted in March 1990 "will not provide an official definition of homelessness or a total count of homeless persons." With regard to the Census Bureau's count, the National Coalition for the Homeless reports that it was at best uneven in the attempt to count targeted homeless persons. In Minneapolis/St. Paul, for example, local officials and shelter providers, realizing the importance of the Census, worked with the Census Bureau to make the count as successful as possible. Yet shelter enumerators were not able to visit all planned sites. Thus, enumerators missed 25 to 30 percent of homeless persons residing in shelters on "S" night. Similar experiences were reported throughout the country.

Despite the difficulty in estimating accurately the size of the homeless population, several credible groups and researchers involved in the issue of homelessness have published estimates. The National Coalition for the Homeless estimates that as many as 3 million individuals are currently homeless and that the numbers continue to grow. The U.S. Conference of Mayors reported in 1988 that there had been an overall increase of 13 percent in requests for shelter over the 1987 figure and that requests for shelter by homeless families with children had increased by 18 percent over the previous year. The National Alliance to End Homelessness estimates that as many as 736,000 persons may be homeless on a given night and that between 1.3 million and 2 million persons may experience homelessness at some point during the year. Countless others may be teetering near the brink of homelessness—one missed paycheck or personal crisis away. These numbers reflect an extremely urgent problem.

Of those who are homeless, approximately 33 percent have been described as being chronically mentally ill. (See J. Wright, "Address Unknown—The Homeless in America," (New York: Walter de Gruyer, Inc. 1989).) At the Committee's June 14, 1989, hearing, Dr. Spencer Falcon, immediate past President of the National Association of VA Chiefs of Psychiatry and Chief of Psychiatry at the Ann Arbor VAMC and a member of VA's Special Committee on PTSD, described the reasons why he believed there is this representation of mentally ill individuals among the homeless population:

> [I]n 1955, there were 559,000 patients in state hospitals; today, at any given time, there are approximately 123,000. Conceptually, deinstitutionalization was not flawed; its implementation was. The importance of psychoactive medication and a stable source of financial support was perceived, but the importance of developing such fundamental resources as supportive living arrangements was not clearly seen nor implemented. Nor was it foreseen how reluctant many states would be to allocate funds for community-based services.

According to VA's third annual report on the HCMI program, "By the end of 1989, 15 studies had appeared suggesting that between 29% and 47% of homeless males were veterans, in contrast to 31.7% veterans among US males over the age of 18 (US Bureau of the Census, 1987). The best recent estimates indicate that between 300,000 and 500,000 Americans are literally homeless—sleeping on the streets or in homeless shelters—on an average night and that 80% of them are males. It thus seems reasonable to estimate that there are, at any given time, between 70,000 and 200,000 literally homeless veterans in America." If the estimates of the National Coalition on the Homeless are used as a base, the number of homeless veterans may be as high as 1,140,000.

VA's Homeless Chronically Mentally Ill (HCMI) Veterans Program: In response to the national problem of homelessness among veterans, VA's HCMI program was first established by Congress in 1987 by section 2 of Public Law 100-6 as a contract authority. In 1988, under section 115 of Public Law 100-322, the Veterans' Benefits and Services Act of 1988, the contract authority was replaced by a requirement for VA to conduct in fiscal years 1988 and 1989 a pilot program for HCMI veterans. VA was authorized, as part of this program, to include in the program veterans with service-connected chronic mental illness disabilities as well as chronically mentally ill VA hospital and nursing home patients. Public Law 100-628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, authorized appropriations of $30 million for each of fiscal years 1989 and 1990 and provided that 50 percent of funds appropriated in each of those years would be available for the HCMI program and 50 percent would be available for the DCHV program. Public Law 101-237 extended the HCMI program's authority through fiscal year 1992. Through the HCMI program, in combination with the DCHV program, VA has provided shelter and medical and psychiatric treatment for over 30,000 homeless veterans in desperate need of such help.

The VA HCMI program is a community-based program that combines aggressive outreach with health-care services, intensive care management, and time-limited care in non-VA residential treatment centers. The results from the program have been encouraging. The third annual report detailing the progress of the HCMI program was submitted to the Committee on February 7, 1990. In its report, VA indicated that, in the first two years of the program, operations in 43 VA Medical Centers in 26 States and the District of Columbia were able to carry out assessments of 19,697 veterans and place 5,343 of them in residential treatment facilities. Given the difficult nature of contacting these veterans—in soup kitchens, shelters, and on the streets—and of building trust between the veteran and the outreach worker, which is necessary to make an assessment and provide for physical and mental examinations, the above numbers demonstrate a genuine success on the part of the outreach workers and are an important measure of the program's successes.

According to VA, program evaluations show that the program is reaching those it was intended to reach: long-term homeless, extremely poor, chronically mentally ill veterans. VA's February 1990 report indicates that over 23 percent of those assessed had been homeless for one or more years; that the median monthly income among these veterans was $90; and that 33.5 percent reported having been hospitalized in the past for a general psychiatric problem.

Not surprisingly, given that the need for ongoing care is the rule rather than the exception in the care of chronically mentally ill persons, the clinicians determined that, at the time of discharge, about half of the veterans had shown improvement but were in need of additional treatment. The 1989 report on the program indicated that only one out of eight veterans had improved to the point of needing no further treatment.

The February 1990 report on the HCMI program devoted an entire chapter to the issue of Human Immunodeficiency Virus (HIV) infection and Acquired Immune Deficiency Syndrome (AIDS) among homeless veterans. The report noted (page 49) that although the evaluation plan for the program did not originally include a formal data-collection plan concerning HIV infection and AIDS,

> . . . it has become clear that from discussions with outreach clinicians that many homeless veterans are either HIV positive or at high risk for AIDS. Sources of risk in this population include:
>
> (1) high rates of substance abuse among HCMI veterans;
>
> (2) small percentages living in monogamous relationships; and

> (3) substantial proportions living on the street, in prisons or in shelters with large numbers of HIV-positive individuals, increasing the risk of being infected through sexual contact or IV drug use.

Because of the extent of HIV infection and AIDS among homeless veterans that had been identified by outreach workers, a survey of the 43 HCMI sites was conducted. The results of the survey indicate that AIDS and HIV infection are significant problems among homeless veterans.

The report indicates that 34 of the 43 HCMI sites had identified homeless veterans suffering with HIV infection. Four of the 34 sites reported that more than 10 percent of veterans interviewed were HIV-positive. The report indicates that the program-wide prevalence of HIV infection is estimated to be 1.64 percent but notes that "[t]his conservative percentage significantly underestimates the number of cases of HIV infection seen by the HCMI veterans program" due to the fact that some sites have only just begun HIV interviews and have no data for the first year of the program.

Other studies have found that people with AIDS and related diseases constitute a growing proportion of the overall homeless population. The Partnership for the Homeless has estimated that 28,000 to 32,000 people with AIDS and an additional 10,000 to 11,000 of their dependents are homeless throughout the country. This figure is expected to grow—to perhaps 101,000 homeless persons with AIDS by 1995.

The National Coalition for the Homeless reports that in New York City at least 8,000 to 11,000 people with AIDS are homeless. The AIDS Action Committee of Massachusetts reports that 30 percent of all homeless people in Boston may be infected with HIV. The Coalition reports that nationwide housing, especially housing with supportive services, is either extremely limited or non-existent for people with AIDS.

The February 1990 VA report on the HCMI program states in its concluding chapter (page 79): "Homeless veterans with HIV infection

> . . . need specialized housing resources, counseling services and health care in addition to those currently available from the HCMI Veterans program."

Domiciliary Care for Homeless Veterans (DCHV) Program: Public Law 100–71, the Supplemental Appropriations Act, 1987, authorized VA to implement the DCHV program and appropriated $15 million for the conversion to domiciliary-care beds of underutilized space located in facilities in urban areas in which there are significant numbers of homeless veterans. Subsequent authorizations of appropriations of $15 million for fiscal years 1989 and 1990 were enacted in Public Law 100–628, the Stewart B. McKinney Homeless Assistance Amendments Act of 1988. Currently, the DCHV program operates at 26 VAMCs in 20 States, providing 1,184 beds to homeless veterans with medical or psychiatric illnesses or both medical and psychiatric illnesses. In establishing the program, VA identified ten VAMCs with under-utilized space located near major urban centers as new sites, and designated ten additional sites within established VA domiciliaries as DCHV program sites. The program was expanded by six additional sites in FY 1989. VA's second progress report on the DCHV program, submitted to the Committee on February 22, 1990, indicates that over 5,000 veterans have been admitted to the DCHV program and over 4,000 have been discharged.

The DCHV program is composed of five clinical phases: (1) community outreach and referral; (2) admission screening and assessment; (3) medical and psychiatric evaluation; (4) medical and psychiatric treatment and social-vocational rehabilitation; and (5) post-discharge community support. The second progress report indicated that the services most frequently provided were medical and psychiatric evaluation and treatment (to over 90 percent of the patients), vocational rehabilitation (58.5 percent), and basic services such as clothing (31.3 percent). Outcome data recorded at discharge indicated that veterans with medical problems showed the most frequent improvement during the course of DCHV treatment (76.1 percent) and that over half of the veterans who had a mental-health problem or a substance-abuse problem showed improvement. Testament to the large demand that exists among homeless veterans for domiciliary care is the occupancy level at the 20 DCHV sites, which overall was above 100 percent during the period ending in July 1989.

A recent visit by a member of the Committee staff to the domiciliary facility at the Brooklyn VAMC has strengthened the Committee's view that the DCHV program can be an effective and compassionate way of assisting homeless veterans. The Brooklyn facility operates a 50-bed domiciliary facility in conjunction with a daytime drop-in center, Project Torch, and, as with the other domiciliaries, provides many veterans with their first real opportunity for relief from homelessness and the substance abuse which often accompanies it. The homeless men and women at Torch and those in the domiciliary credited the program for many significant improvements in their lives and expressed a desire to see treatment opportunities expanded to include those individuals still on the streets. The Committee was extremely pleased to learn first-hand about the positive therapeutic environment that has been created as part of the Brooklyn program and the tremendous spirit and pride of the recovering veterans in the domiciliary facility. It is greatly encouraged by the outstanding efforts of both the staff and patients there.

It is the Committee's view that VA's HCMI and DCHV programs have helped meet many of the short-term needs of our homeless veterans—a place off the street to sleep; the opportunity to receive much needed medical and mental health assessments; and the furnishing of appropriate care and rehabilitative services. These services are not luxuries; they constitute humane responses to basic human needs. The Committee believes much of the success of these two programs can be attributed to the dedication and commitment of the VA personnel who work in them. In order for even the best-conceived governmental program to succeed, men and women must be found who will do the job in the field and do it well, and from all indications VA personnel in the HCMI and DCHV programs are doing just that.

As the reports on these programs indicate, however, additional resources and approaches are needed to enhance and improve the programs' capacities and effectiveness. The Committee agrees with the recommendation in the third progress report on the HCMI program that there be established integrated, comprehensive service programs for homeless veterans coordinated among the HCMI program, the DCHV program, and other VA programs assisting homeless veterans. The Committee believes that the expanded authorizations and services for homeless veterans provided for in the Committee bill would allow VA to develop and establish such programs, including drop-in centers similar to the Brooklyn VAMC's Project TORCH, as well as assign additional personnel to the existing HCMI and DCHV programs.

Committee bill

The Committee bill would increase the level of appropriations authorized for the HCMI and DCHV programs over the next three years and extend the authority of both programs through FY 1993. For the HCMI program, the current $15 million level authorized for FY 1990 would be increased to $30 million for FY 1991, $35 million for FY 1992, and $40 million for FY 1993. The DCHV's authorized levels of appropriations would be increased from the current level of $15 million for FY 1990 to $20 million for FY 1991, $22.5 million for FY 1992, and $25 million for FY 1993. The Committee believes that these increases are warranted given the general successes of many of these programs and the need for additional services for homeless veterans indicated by the large numbers of homeless veterans, the over-filled domiciliaries, and the VA evaluations of the HCMI and DCHV programs indicating that expansions and enhancements are needed.

In addition, the Committee notes the importance of the annual reports issued by the evaluation components for each of the programs. These reports have been extremely useful in the Committee's review of the programs and indicate that the programs are well-monitored and are reaching the target populations. The Committee bill would require that these evaluations be continued and extended to cover the new program components as well.

In light of the extent of HIV infection and AIDS among homeless veterans, as noted above in the discussion regarding the HCMI program, the Committee intends that additional resources provided pursuant to these increases in the authorizations of appropriations for the HCMI and DCHV programs should be used by VA to address the multi-faceted problems confronting the significant numbers of homeless veterans with AIDS and related disorders. Even if additional appropriations are not made, the Committee expects VA to find a way through its two homeless veterans programs to begin to address these HIV-related problems.

The Committee bill would also require VA medical centers or regional benefits offices, in consultation with existing organizations providing services to homeless persons in the area, to conduct assessments with respect to the needs of homeless veterans in the areas of health care, education and training, employment, shelter, counseling, and outreach services. The assessments would be required to indicate the extent to which the network of existing VA and non-VA programs meet the identified needs. The purpose of this assessment would be to allow VA to identify the gaps in the existing network of systems providing services to homeless veterans and to develop appropriate plans to address those areas. The Committee does not intend that VA engage in a counting of homeless veterans, which would be difficult, costly, and in some respects duplicative of the Census Bureau's recent efforts to attempt a count of homeless persons. Rather, the Committee intends to ensure that VA programs designed to provide services to homeless veterans focus on services that are not currently available to them.

The Committee recognizes that some States and localities have existing programs designed to provide assistance and services to homeless individuals. Federal funding of programs to assist homeless persons, such as funds provided under the McKinney Act and its amendments, is often provided to States and local agencies which operate the programs. In addition to federally funded programs, some States and local governments carry out their own programs for assisting homeless persons. Private organizations often provide needed services to homeless persons as well. The resulting situation is that various and different "safety nets" to provide services to homeless persons exist throughout the Nation. The Committee believes that, in localities where the network of existing programs provides services to homeless veterans, VA should be familiar with those programs and coordinate its own programs to ensure that gaps in the safety nets are filled. Similarly, in localities where no network of programs for homeless persons exist, or very few such programs exist, the Committee believes that VA should recognize that its programs will be the sole source of assistance for homeless veterans and develop programs of sufficient breadth to meet the needs of homeless veterans. For these reasons, the Committee bill would require that VA medical centers or regional benefits offices, in consultation with other VA facilities within the area and existing groups with experience working with homeless persons in the area, conduct assessments with respect to the needs of homeless veterans within the area served by the medical center or regional benefits offices. The Committee believes that such assessments would help to ensure that VA programs do not overlap or duplicate existing programs and result in coordinated efforts at the local level to assist homeless veterans. As Senator Kerry said in his introductory statement of S. 2128, the legislation from which these provisions were derived, "In order to help homeless veterans, we need to know who they are and where they are."

The report accompanying S. 566, the proposed National Affordable Housing Act recently passed by the Senate, stated, with regard to homeless programs administered under the McKinney Act and its amendments:

> HUD has not administered McKinney programs well. Regulations have been overly complicated, funding has been slow in coming. Homelessness needs an emergency response—which can only be achieved at the State and local level.
>
> The McKinney homeless programs are also too rigid and categorical, each one designed to resolve a special homeless problem whether or not that's the problem which States and localities face. (S. Rept. No. 101-316, p. 35.)

The Committee expects that the assessments that would be required by the Committee bill would help to avoid rigid, centrally-operated programs and lead to local programs that address the problems faced by homeless veterans at the local level. The Committee further expects that Vet Centers, which often have extensive experience conducting outreach and providing counseling to Vietnam-era veterans, would be an important component in the medical centers' or regional offices' efforts in accomplishing the assessments.

The Committee believes that by targeting VA programs directly at areas that are currently underserved, while at the same time coordinating closely with other providers of services to homeless persons, VA would be spending its resources in the most cost-effective manner to benefit homeless veterans. In this regard, the Committee bill would require each medical center to develop and carry out a plan, within existing authorities and resources, for addressing the areas identified by the assessment as underserved.

The Committee bill would also establish a pilot program to determine the effectiveness of providing, through contracts with existing community-based organizations, domiciliary care (including medical services) to homeless veterans eligible for such care from VA. Appropriations of $1.5 million per year would be authorized for each of FYs 1991, 1992, and 1993 for pilot projects at up to 15 sites per year. The Committee notes the foregoing discussion about the general successes achieved by VA contracts with community-based organizations under the HCMI program in helping to meet the needs of chronically mentally ill homeless veterans. This new authority would allow VA to enter into contracts with non-VA facilities to provide services to homeless veterans who are not chronically mentally ill but are in need of medical, psychological, or rehabilitative services. The Committee expects that community-based halfway houses, therapeutic residences, or shelters that provide medical, vocational, or rehabilitative services would be the types of facilities that would qualify for contracts under this new authority. In entering into contracts, preferences would be required to be given to existing facilities that provide the most comprehensive services, particularly those services identified in the VA assessment as being inadequately met in the area.

The Committee bill would also authorize, upon the Secretary's determination that the pilot programs were effectively meeting the domiciliary needs of homeless veterans, the transfer of certain funds appropriated to carry out the HCMI or DCHV programs. However, such a transfer could not be made in an amount more than would reduce the appropriations for those programs below the level spent on them during the previous fiscal year. The Committee believes this authority would allow the Secretary additional flexibility to allocate resources for homeless programs to the new pilot program if such an allocation should be seen as warranted.

In addition, the Committee bill would authorize the Secretary to accept donations of funds and services for the purposes of establishing one-stop, non-residential services and mobile support teams for the assistance of, and for expanding the medical services to, homeless veterans already eligible for such services from VA. As noted earlier, such one-stop, non-residential services were recommended by VA in its February 1990 evaluation of the HCMI program. The Committee believes that this authority would allow VA to gain access to resources above those allocated to or by the Department, and allow VA to encourage more extensive community participation in and support for its programs for homeless veterans.

Cost: CBO estimates that enactment of section 218 would entail costs of $53 million in budget authority and $45 million in outlays in FY 1991, and total costs of $180 million in budget authority and $179 in outlays in FYs 1991-1995.

Extension of Pilot Program of Mobile Health Care Clinics

Section 219 of the Committee bill, which is identical to section 201 of S. 2100 as introduced, would amend section 113(b) of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322) so as to extend for one year, through September 30, 1991, the authorization for VA's mobile health clinic pilot program and to provide that all funds appropriated for this program remain available until expended.

Background

The Committee has long been interested in and concerned about access to health care for veterans in rural areas. The Committee held a July 1983 hearing which addressed this issue and, in 1987, the Senate Appropriations Committee directed VA to explore various alternatives for improving health services for veterans in rural areas (Senate Report No. 99-487, p. 87). In response to this directive, VA established a pilot program of two satellite medical offices in Farmington, New Mexico and Redding, California. On November 15, 1989, the Committee on Veterans' Affairs held another hearing regarding health care for these veterans. At that hearing, as it had in 1983, the Committee heard testimony about problems associated with travel distances, adverse weather conditions, and the capacity of health-care facilities to meet veterans' needs.

VA's February 1986 report entitled "Study of Health Care Services to Veterans Living in Geographically Remote Areas" revealed that veterans living in rural areas are proportionately higher users of VA health-care services than veterans in urban area. The study also found that there is a higher percentage of persons living below the poverty level in rural areas as compared to highly urbanized areas; that the further away veterans live from a VA facility, the less likely they are to seek VA care, particularly outpatient care; and that there are slightly more service-connected-disabled veterans per 1,000 population in the lesser populated areas.

One significant difference between urban and rural veterans is the difficulty the latter face in gaining access to VA health services. In eastern Montana, for example, 83 percent of veterans live over 100 miles from the nearest VA medical facility. Bus service in the region is sporadic and severe winter storms combine with long distances to make travel to VA facilities an ordeal. In contrast, the Chicago metropolitan area has four VA medical centers. The situation in Montana has improved in recent years, thanks to the generosity of the American Legion, the Disabled American Veterans and the Veterans of Foreign Wars, whose members established a network of vans to transport veterans to and from the Miles City and Fort Harrison VAMCs. However, other rural states generally lack similar volunteer programs. Moreover, improvements in travel to medical centers are not necessarily the only solution to the health-care needs of rural veterans. Many require outpatient services that might be delivered more cost-effectively and efficiently by mobile clinics.

Mobile clinics may be used to deliver either primary outpatient care or mental health services. Treatment teams may be composed of physicians, nurses, social workers, technicians, psychologists, and clerical staff. These teams can provide a wide range of treatment and diagnostic services. Most importantly, the staff of mobile clinics can perform routine tasks, such as drawing blood, prescribing drugs, and dressing wounds, that do not require hospitalization, and provide diagnostic services for making decisions as to the need for the patients to travel to the nearest VA medical center.

The strength of the mobile clinic approach is its flexibility. Such clinics can treat small, scattered veteran populations in remote areas where the workload is insufficient to justify establishment of a permanent clinic. They can be shifted among various locations to accommodate fluctuating demand and to provide veterans with convenient access to care.

Section 113 of Public Law 100-322, enacted on May 20, 1988, required VA to implement a two-year pilot program of mobile health-care clinics. Under this program, VA was to establish geographically-dispersed projects using appropriately equipped mobile vans to furnish health care to veterans in rural areas at least 100 miles from the nearest VA health-care facility. In addition, VA was directed to submit to the House and Senate Veterans' Affairs Committees reports on VA's experience during the program and, at its conclusion, reports containing information and detailed breakdowns on services provided, costs, and client characteristics, as well as an evaluation of the program.

Unfortunately, there were no funds appropriated for this program for FY 1989. For FY 1990, however, $3 million was appropriated for the rural mobile health clinics, and VA is moving toward their establishment. Terminating the program at the end of FY 1990 would prevent VA from conducting a thorough test and evaluation of the program. At present, insufficient data exist to determine whether widespread implementation of rural mobile health clinics would provide a cost-effective and efficient solution to some of the difficulties rural veterans face with regard to access to appropriate VA health services.

The Committee believes that it is important to explore various alternatives for improving health services for rural veterans. Thus, it supports the development of other pilot programs, such as the outpatient clinics established in Redding, California, and Farmington, New Mexico. But the existence of these programs in no way diminishes the need for a thorough test of mobile health clinics. Unless the rural mobile health clinic pilot program is completed, VA will be unable to determine which balance among alternatives would best enable it to furnish health-care services to veterans in rural areas.

At the Committee's June 14, 1990, hearing on health-care legislation, VA officials supported a one-year extension of the pilot program but opposed the provision which would allow funds for the project to remain available until expended. The veterans service organizations represented at the hearing supported the measure.

Committee bill

In order to complete the two-year pilot program that was the original intention of section 113 of Public Law 100-322, section 219 would extend the authorization through the end of FY 1991. In addition, so that all funds appropriated for this pilot program can be used for that purpose, the authorizing legislation would be amended to provide that all funds appropriated for the program will remain available until expended.

The Committee bill would not alter the content or the submission timetable for the reports VA must produce for the House and Senate Veterans' Affairs Committees. VA would be required to submit, not later than 20 months after the beginning of the program, a report on its experience during the first 17 months of the pilot program. A final report, containing detailed breakdowns on services provided, costs, and client characteristics as well as the Secretary's evaluation of the program, would be required to be submitted to the Committees not later than 27 months after the beginning of the pilot program.

Costs: CBO estimates that enactment of section 219 would cost $5 million in budget authority and $3 million in outlays in FY 1991.

Advisory Committee on Prosthetics and Special-Disabilities Programs

Section 220 of the Committee bill would require the Secretary to establish an Advisory Committee on Prosthetics and Special-Disablities Programs which would be required to submit to the Secretary and the Committees on Veterans' Affairs by January 15, 1991, the first of its annual reports on the effectiveness of the VA's programs in those areas.

Background

As discussed in the Appendix to this report, problems in several significant aspects of VA's prosthetics and special-disabilities progams were identified in the Committee's 10-month review of those programs. At the Committee's June 7 hearing on these programs, VA acknowledged that many problems existed and cited its intention to establish administratively an advisory committee to examine further the areas of concern that had been raised.

Committee bill

The Committee bill would therefore, require the Secretary to establish an Advisory Committee on Prosthetics and Special-Disabilities Programs. The Advisory Committee members would be appointed by the Secretary and would be required to include (1) appropriate representatives who are veterans who use prosthetic devices; (2) individuals who are recognized expects in prosthetic engineering; (3) individuals engaged in prosthetic research; (4) individuals engaged in rehabilitative medicine; (5) individuals engaged in the clinical treatment of individuals who are users of prosthetic devices; (6) individuals engaged in clinical treatment in the Department's special disabilities programs; and (7) such other individuals with pertinent experience or expertise as the Secretary may determine appropriate. The Committee bill would also authorize the inclusion of *ex officio* members from the Department.

The Advisory Committee would be charged with responsibility for advising the Secretary and the Chief Medical Director on all matters related to (1) prosthetics and special-disabilities programs administered by VA; (2) the coordination of programs of the Department for the development and testing of, and for information exchange regarding, prosthetic devices; (3) the coordination of Department and non-Department programs that involve the development and testing of prosthetic devices; and (4) the adequacy of funding for the prosthetics and special-disabilities programs of the Department. One area that the Committee believes requires top priority attention by such an advisory committee is the establishment of criteria for locating SCI and blind rehabilitation centers and units.

The Advisory Committee would be required to submit its first report to the Secretary and the Committees on Veterans' Affairs by January 15, 1991, and to issue subsequent reports by January 15, 1992, and January 15, 1994. The Committee expects that the Advisory Committee would meet a sufficient number of times to address the many significant problem areas that have been indentified. The Committee intends to maintain its active oversight of the prosthetics and special-disabilities programs and to monitor the establishment and the activities of the Advisory Committee.

The Committee agrees with the statement made by Deputy Secretary Principi at the Committee's June 7 hearing regarding VA's prosthetics programs that "perhaps no other area comes closer to representing the essence of VA's mission." The Committee is very hopeful that the identification of problem areas and the constructive dialogue with VA that has ensued will lead to meaningful changes in the way these programs are adminstered by the Department. However, many of the necessary improvements have yet to be initiated. Because of the high priority that these programs should be given within the Department and the many problems that were identified through extensive investigation and at the hearing, the Committee believes strongly that an ongoing and independent advisory committee comprised of experts in the different fields of prosthetics development, testing, and clinical treatment, as well as representatives of veteran-users of prosthetics, would serve to keep the Department and the Congress properly advised of both new developments and new and lingering problems and to promote implementation of corrective actions.

Cost: CBO estimates that enactment of section 220 would entail no significant costs.

Other General Health Provisions

Section 221 through 231 of the Committee bill are derived from sections 211 through 214, 216, 217, 219, 220(2), 222, 223, and 224, respectively, of S. 13 as reported by the Committee on September 13, 1989, without substantive change (except for the deferral by one year of certain dates and fiscal years in light of the fact that the anticipated date of enactment is now one year later).

The background, descriptions, and explanations of these provisions are set forth in the Committee's report accompanying S. 13 (S. Rept. No. 101-126, pages 149-81), as are the additional views of Senators Murkowski and Simpson on section 214 of S. 13 (*Id.* at page 492), relating to preventive health care, which corresponds to section 224 of the Committee bill.

Part C—Health-Care Personnel

Health Professionals Educational Assistance Programs

Section 242 of the Committee bill, which is derived from S. 2542 as introduced, would amend chapter 76 of title 38 to add a new subchapter V so as to establish a new program to provide post-secondary educational assistance—in the form of a $400 per month stipend—to students in health professions who are eligible for educational assistance under the Montgomery GI Bill program for reservists (chapter 106 of title 10) in return for agreement for subsequent service with the Department of Veterans Affairs.

Background

VA's difficulties concerning the recruitment and retention of health professionals has been well documented. Over the last several years, the Committee has examined these issues and recommended legislation to address these problems. The background, descriptions, and explanations of these actions are set forth in the Committee's report accompanying S. 13 (S. Rept. 101-126) as well as S. 9 (S. Rept. 100-215). Section 232 of this bill is intended to provide the Secretary with an additional tool to aid in recruitment and retention efforts.

Public Law 98-525, the Department of Defense Authorization Act of 1985, established the Montgomery GI Bill-Selected Reserve. Under this educational assistance program designed for National Guard members and other reservists, most reservists are eligible to receive $5,040 from the Department of Defense to assist with the financing of their undergraduate studies. To qualify for the GI Bill benefit, the individual must enlist in the Selective Reserve for at least six years, have a high school diploma or high school equivalency certificate before completing initial active duty for training, and hold no baccalaureate degree. The individual receives about $140 per month for 36 months for full-time training. According to the most recent data available, in fiscal year 1988 nearly 64,000 individuals used the educational benefits for full-time study under the Montgomery GI Bill-Selective Reserve. Of this number, about 2,900 pursued careers in a health-related area.

During the Committee's June 14, 1990, hearing, VA and the veterans' service organizations generally testified in support if this provision. According to VA's testimony, this provision would be distinctive for its potential for improving VA's staffing situation at less than half the cost per participant than the current VA scholarship program.

Committee bill

Section 234 of the bill—which is similar to H.R. 3199 as passed by the House in October 1989—would amend title 38, U.S.C., to establish a new discretionary program to provide additional post-secondary educational assistance to students in health professions who are eligible for educational assistance under the Reserve Montgomery GI Bill program in exchange for the student reservists' agreement to subsequent service with the Department of Veterans Affairs.

Specifically this legislation would provide the Secretary of Veterans Affairs with the authority to pay an additional $400 per month to a reservist who majors in a health-care profession and in return agrees to work in a VA health-care facility for a period of obligated service. This stipend would be provided only for the time when the student is taking his or here health related courses. The agreement between the individual and VA must provide that the individual would serve one year in a VA health-care facility for every year of assistance received from VA. A participant who does not fulfill his or her obligation with VA would be obligated to repay the benefit amount, plus interest and penalty; repayment would be required to be made directly to VA beginning on the date of the breach of contract.

This new program would permit VA to target certain health professionals for participation in the program. Therefore, the Secretary may determine the extent to which this program will be implemented.

Cost: CBO estimates that enactment of section 242 would entail estimated costs of $8 million in budget authority and $6 million in outlays in FY 1991, and total costs of $42 million in budget authority and $40 million in outlays in FY's 1991–1995.

Other Health-Care Personnel Provisions

Sections 243 through 256 of the Committee bill are derived from sections 251, 254, 255, 256, 257(a), 259, 260, 261, 263, 264, 265, 267, 269, and 270, respectively, of S. 13 as reported by the Committee on September 13, 1989, without substantive changes (except for the deferral by one year of certain dates and fiscal years in light of the fact that the anticipated date of enactment is now one year later).

The background, descriptions, and explanations of these provisions are set forth in the Committee's report accompanying S. 13 (S. Rept. No. 101–126, pages 181–223), as are the additional views of Senators Murkowski and Simpson on section 251, relating to competitive pay for VA Registered Nurses, which corresponds to section 243 of the Committee bill, and section 259, relating to cash awards for nurses who obtain speciality recertification, which corresponds to section 248 of the Committee bill (*id.*, page 491).

Part D—Special Pay for Physicians and Dentists

Introduction

The physician and dentist compensation provisions of the Committee bill are designed to give VA's Secretary and Chief Medical Director the tools with which to act with flexibility, speed, and equity in setting levels of pay for physicians and dentists that are necessary to ensure the smooth functioning of VA facilities and the high quality of care that the nation desires VA to provide. The Committee bill would substantially raise the upper limits on the categorical and total amounts of special pay for a VA physician or dentist. The Committee's intent is for VA to use the ranges of pay proposed in the bill to recruit and retain clinicians of high quality, while not paying more than it must in order to do so. The Committee's policy, just as it was with respect to the nurse pay reform provisions in S. 13 (S. Rpt. No. 101-126)—also contained in section 243 of the Committee bill—is that VA should not be the remuneration leader in a particular geographic or specialty area.

This bill includes provisions to encourage physicians and dentists to stay with VA; to provide incentives for clinicians difficult to recruit and retain specialties to come to VA; to make VA more attractive in certain localities where recruitment and retention have been particularly difficult, such as high-priced urban centers or isolated rural communities; to reward board-certification as part of the scheme to maintain high-quality care; to provide reimbursement to physicians and dentists for certain continuing education expenses; to compensate those physicians and dentists in administrative positions in ways that would help VA retain able executives; and to allow the possibility of reward for exceptional skill or qualification.

The bill's provisions were first introduced by Senator Cranston as S. 2701 on May 24, 1990. S. 2701 was derived in substantial part from title I of H.R. 4557 as passed by the House of Representatives on May 1, 1990. The Committee received testimony on S. 2701 and H.R. 4557 at its June 14, 1990, hearing. Based on the testimony and other information, certain revisions were adopted by the Committee at its June 28, 1990, meeting. On June 13, 1990, S. 2732 was introduced at the Administration's request, too late for Committee consideration.

Also contributing substantially to the Committee's development of the Committee bill was extensive testimony received at oversight and legislative hearings on the VA health-care system covering related topics such as the VA budgets for FY 1990 (February 7, 1989) and 1991 (February 23, 1990), health-care budget shortfalls (September 9 and 20, 1988, and April 6, 1989), care for veterans in isolated rural areas (November 15, 1989), the proposed Commission on the Future Structure of VA Health Care (March 28, 1990), and numerous Committee visits to various VA health-care facilities over many years.

The Committee acknowledges the debt it owes in crafting the special pay provisions in the Committee bill to the excellent work of the House Committee and its leadership, Chairman "Sonny" Montgomery and Ranking Minority Member Bob Stump, in developing title I of H.R. 4557. The Committee was in the enviable position of having had the advantage of the invaluable spade work done by the House Committee which provided a strong foundation upon which to build. This Committee has also had the benefit of numerous comments from affected parties on H.R. 4557. Finally, the Committee is indebted to many officials in the Veterans Health Services and Research Administration (VHS&RA) for their outstanding cooperation in answering numerous inquiries and providing a great volume of technical data.

Legislative Background on VA Physician and Dentist Pay

Until 1975, VA physicians and dentists were paid generally in accordance with a pay schedule that applied to most Federal employees. The 1975 enactment of Public Law 94-123, the Veteran's Administration Physician and Dentist Pay Comparability Act, established a temporary special pay mechanism for VA physicians and dentists. The administration's plan at the time was to develop a permanent, unified salary structure applicable to all Federal physicians. However, on August 6, 1979, in response to repeated Committee inquiries, the then-Director of the Office of Management and Budget, James T. McIntyre, Jr., responded that:

> we have gradually come to believe that it is not feasible to design a unified salary system that would successfully address the varying problems faced by agencies in the recruitment and retention of Federal physicians. Consequently, we think the best solution is to recognize the very different attraction and retention problems of various groups of physicians by having individual bonus authorities specifically tailored to each group. . . .

In response, the Committee then developed S. 2534, and provisions derived from that legislation were included in H.R. 7102, which was enacted over a Presidential veto in 1980 as Public Law 96-330, the Veterans' Administration Health Care Amendments of 1980.

The Committee took great pains in S. 2534 to provide VA with a rather elaborate set of flexible pay authorities designed to enable it to recruit and retain competent, dedicated employees, and the Committee bill would build a number of new structures on the successful foundation established in 1980.

Under current law, VA physicians and dentists are paid under a system of base pay and special pay. Base pay is determined by Executive Order. The current special pay categories, the rates for which have not been changed since 1980, are: full-time status, primary, scarce specialty, tenure, geographic location, specialty certification, and executive medicine. Table 13, which follows, presents the special pay categories in current law in comparison with current legislative proposals, including the Committee bill.

Public Law 96-330 also requires the head of VA (then the Administrator of Veterans' Affairs, now the Secretary of Veterans Affairs) to submit regular reports to the President and Congress recommending appropriate amounts of special pay to ensure that VA physicians and dentists are paid at levels reasonably comparable with compensation of both physicians and dentists in other Federal agencies and physician and dentists in non-Federal positions. Although greatly delayed in its release—due December 1988, completed March 1989, and released October 10, 1989—the most current report, the Secretary's Quadrennial Report to the President on the Adequacy of VA Physician and Dentist Special Pay, is a very useful document in its breadth of scope and detail.

The Quadrennial Report succeeds in fulfilling Congress' purpose in requiring the regular special pay reports—ensuring that difficulties in recruitment and retention would be tracked and that the degree of success of various techniques to ameliorate those difficulties would be assessed periodically. The analysis made by the Klemm Analysis Group, a private firm with which VA contracted for the data collection and analysis, and the recommendations made by the VA Task Force on Physician Pay based on the Klemm report provide a sound basis for a restructuring of categories of special pay as well as the justification for VA to pay substantially higher amounts of special pay.

Overall U.S. Need for Physicians

VA does not exist in a vacuum. Just as VA's major role in training U.S. medical students and residents influences the quality and quantity of new clinicians, so decisions about the funding of medical education and various actions by medical schools influence the relationships between VA and its many affiliated educational institutions.

Federal programs such as the National Health Service Corps, medical school capitation grants, and scholarships and loan forgiveness to medical students each alter the financial incentives to potential clinicians as they make their career decisions. Various factors such as escalating medical malpractice rates are changing the types of specialties that graduating medical students are choosing to pursue—discouraging pursuit of obstetrics, for example—while changing disease patterns, such as with respect to AIDS, deter some physicians from internal medicine and other high-patient-contact specialites. Finally, actions by the Health Care Financing Administration (HFCA) in its control of Medicare and Medicaid reimbursement dollars to influence broad changes in mechanisms of both hospital reimbursement and, now, physician pay, also affect VA's attitude toward physician and dentist pay.

In general, the financial situation of non-VA institutions influences (and is influenced by) VA's fiscal condition. Budgets are tight everywhere. The level of uncompensated care provided by non-VA hospitals has greatly increased, and, slowly, the various parties in the health-care community—such as state legislatures, insurance carriers, hospital and clinician associations, HCFA, and the Congress—have been implementing both patchwork and coordinated alterations to payment mechanisms.

Medical schools often augment VA physician's salaries in order to maintain good physicians in VA hospitals to provide supervision and instruction to the students trained there. If VA either cannot recruit good doctors because of relatively low compensation packages or if its larger budget crisis dictates overall cuts in VA health-care services, the medical schools are deprived of the training ground they need. In recent years as health-care funding in the U.S. has tightened, medical schools have not had the same level of descretion in budgeting that they have had in the past. The extent to which they choose to augment VA salaries is determined by other strongly competing needs.

The influence of health maintenance organizations on physician staffing patterns, as well as the recent moves by many states to provide better pay to clinicians working in State hospitals, also affects VA efforts to recruit and retain clinicians.

As the National Institutes of Health (NIH) focuses its research funding on large-scale, continuing, and expensive projects, new clinical researchers face grim competition for the smaller piece of the NIH extramural funding pie which goes to not-yet-established researchers. VA's tradition of funding new clinician-researchers—which has yielded great benefits to veterans, non-veterans, and researchers alike in terms of improved treatment and procedures, as well as the career development and, therefore, the recruitment and retention of high-quality clinicians—has been hurt by the diminishing real value of the VA Medical and Prosthetics Research account over the years, at the same time as NIH resources available to VA researchers have also been diminishing. Thus, as the recruitment potential of the promise of research support diminishes, direct pay takes on even greater importance.

Current State of VA Physician Recruitment and Retention

On December 31, 1989, there were 12,734 physicians employed in VHS&RA. Of those, 55 percent (or 7,005) served full-time (VA Annual Report to Congress on Special Pay, 1990).

Board-certification was held by 65.3 percent of full-time physicians and 72.2 percent of part-time physicians. Graduates of foreign (neither U.S. nor Canadian) medical schools held 36.7 percent of the full-time positions and 17.9 percent of the part-time positions in VHS&RA in 1989. The proportion of VA-employed physicians who held faculty appointments at universities was 29.6 percent of the full-timers and 49.3 percent of the part-timers.

In 1989, 97.3 percent of full-time VA physicians received some special pay as did 65.6 percent of part-time VA physicians. Of those physicians who received special pay in 1989, average salary—combining average base pay and average special pay—was $89,293 for full-time physicians and $54,755 part-time physicians.

Although there are nine grades at which physicians can be paid in VHS&RA, there is much pay compression at the mid-level; 88 percent of full-time physicians (and 87.5 percent of part-time) are clustered in the Chief Grade, leaving 9 percent of full-time and 12.4 percent of part-time physicians either ungraded or in the four grades below Chief and 3 percent of full-time and 0.1 percent of part-time physicians in the three grades above Chief.

Using 1987 figures, the Klemm Report highlighted the pay compression problem by pointing out that "on average, a physician could expect to make 78.7 percent of the 1978 allowable maximum salary of $72,500 upon entering the VA in 1987." And for board-certified physicians, who may receive an additional $2,000 in special pay, "[t]he physician is now up to 81.2 percent of the maximum as soon as he or she enters the VA. By the eighth year of service, the total pay is over 90 percent."

For a discussion of "specialties," the following chart, which uses VA data from physician payment files and is reprinted from the Klemm Report, identifies 55 so-called "patient" and "non-patient" specialties.

Table 2.—VA Physician Specialty Assignments, December 1989

Specialty

Surgical specialties: Anesthesologist, Colon and rectal, General, Gynecology, Neurological, Ophthalmology, Orthopedic, Otolaryngology, Plastic, Thoracic, and Urology.

Medical specialties: Allergy and immunology, Cardiovascular diseases, Clinical scholar, Dermatology, Endocrinology and metabolism, Family practice, Gastroenterology, General internal medicine, General practice, Hematology, Infectious diseases, Medical oncology, Nephrology, Preventive medicine, Pulmonary diseases, Rheumatology, and other medicine.

Psychiatry and neurology: Neurology, Psychiatry, and Substance abuse.

Pathology: Anatomic, Clinical, and Pathology.

Radiology: Diagnostic, Diagnostic and therapeutic, and Therapeutic.

Other specialties: Geriatric fellow, Nuclear medicine, Paraplegia, Physical medicine, and Spinal cord injury fellow.

Research: Clinical investigator, Research, and Research associate.

Administrative: Admitting, Chief of staff, Chief of staff trainee, Assistant chief of staff, Associate chief of staff—ambulatory care, Associate chief of staff—Education, Associate chief of staff—research and development, Director, Physicians in VACO, and other physicians.

Source: Excerpted from Table 6, VA Annual Report to Congress on Special Pay for CY 1989.

It should be noted that these "specialities" are not necessarily medical specialties as recognized by boards such as the American Board of Psychiatry and Neurology. These are specialties in the practical sense of the areas in which the physicians focus their practice. Hence, categories such as Medical Center Director, Paralegia, General Practice, and Chief of Staff Trainee exist along with the nationally-recognized Neurosurgery, Gastroenterology, and Family Practice.

In CY 1989, VA declared six designated scarce specialties nationwide and employed such physicians in these specialties to the following extent:

TABLE 3.—NUMBER OF PHYSICIANS PAID AS VA-DESIGNATED SCARCE SPECIALTIES, CY 1989

Designated scarce specialty	Full-time	Part-time
Anesthesiology	189	128
Orthopedic surgery	60	265
Pathology	422	155
Physical medicine and rehabilitation	218	97
Radiology	409	269
Spinal cord injury	42	7

Source: VA Annual Report to Congress on Special Pay, April 1990; CY 1989 data.

In addition, in CY 1989, VA allowed facility directors in 30 locations to pay geographic-need special pay. There were 11 such authorizations in CY 1987 and 19 in CY 1988. Of those in CY 1989, 77 percent were for physicians in psychiatry positions.

Turnover and Vacancy Rates and Other Measures of Recruitment and Retention Problems: The Klemm report defined a turnover—or separation—rate as the number of losses during the year divided by the average number of positions at risk during that year. The overall turnover rate for full-time VA physicians in 1987 was 9.7 percent. Data were presented by physician specialty and the complexity level of the facility. (Level I was the most complex, with 100 percent of its members affiliated with a medical school, 81.4 percent in large SMSAs, with an average of 149.4 physicians and 695.1 beds. Each level of lower complexity also had lower affiliation rates, lower percentage located in large SMSAs, fewer physicians, and fewer beds.) The turnover rate varied greatly by the complexity level of the facility (less turnover in the most complex) and by physician specialty.

The Klemm analysis also examined turnover rates by age of the physician and by years of VA experience. Turnover was the highest, in fiscal years 1985, 1986, and 1987, for those with 19 or more years—likely retirees—or 4 or less years of VA experience. The Klemm report used that observation to justify its recommendations of (1) increased amounts of tenure pay, and (2) extension of the gradients beyond the sets (2 years; 2 to 5 years; 5 to 8 years) specified in current law to well into a long career path.

The replacement rate, as defined in the Klemm report, is the number of gains in a particular station or specialty divided by the number of losses in that station or specialty. The Klemm Group attempted to "match a gain as closely as possible with a particular loss . . ." and, therefore, ". . . performed an approximation." The report states, "The replacement rates are so calculated to represent the average proportion of all losses in the fiscal year that are filled within twelve months. Thus, they capture not only whether positions are being filled, but also the speed at which they are filled."

It is of particular interest, as an example for the VA system overall, that of full-time, board-certified physicians who leave, only 77.8 percent are replaced within one year by someone with equivalent qualifications. The more detailed tables in the Klemm report show great variation in replacement rates by specialty and by facility complexity.

Last, Klemm developed a vacancy rate measure which "represents the proportion of total positions available that are not filled at a given point in time" and is calculated as the number of vacancies at the end of the year divided by the number of physicians on duty plus the number of vacancies at the end of that year. The Klemm tables present greater detail (multi-year comparisons and specialty-category-specificity). The following table is a summary composite of the 1987 figures:

TABLE 4.—VACANCY RATES, CY 1987

Comparison	Full-time	All
Overall (percent)	5.8	4.7
Facility complexity level:		
I	3.4	2.9
II	5.7	4.8
III	9.4	8.8
IV	9.5	9.0

Source: VA data, excerpted from Tables IV-19 and 29, Klemm report.

The table shows that the vacancy rate, both for all physicians and for only full-time physicians, increases as the complexity level decreases. That is, on average, highly affiliated medical centers have the lowest vacancy rates.

The Klemm report attempts to bring these three measures together in one analysis. The detailed report shows the overall turnover rate for full-time physicians to be 6.7 percent, 10.5 percent, and 9.7 percent in 1985, 1986, and 1987, respectively. The problems with turnover and vacancies are more pronounced in the less "complex" medical centers which are not affiliated with medical schools. The replacement rate for full-time physicians decreased over those three years from 108.9 percent to 88.5 percent to 89.9 percent. However, when looking more specifically at the qualifications of the physicians being replaced, Klemm noted that the replacement rate for similarly qualified physicians was decreasing markedly. The replacement rates for full-time, board-certified physicians from 1985 to 1987 were 102.9 percent, 81.8 percent, and 77.8 percent.

The Committee finds most significant and disturbing that nearly a quarter of the positions vacated by full-time, board-certified physicians were not filled with full-time, board-certified physicians.

Contract Costs for Physician Services: Another measure which demonstrates, to some degree, the extent to which VA cannot either recruit or retain an adequate physician staff complement is the amount of money VA spends on contracts for physician services from non-VA sources. As the Klemm report put it, "two basic justifications can be made for entering into a contract agreement: (1) the particular medical center may not require the services of a regular full- or part-time employee, making it more efficient to hire a contractor; (2) the medical center may have difficulty in hiring a regular employee, in which case they must resort to hiring a contractor." It then went on to point out that available data do not make it possible to determine which contracts were let for which purpose. Contracts can be written on an FTE (full-time equivalent) basis, in which case costs can be somewhat compared between contracts and VA salaries, or on a per procedure, per clinic, per hour, or flat-fee basis.

The following table is compiled from Tables IV-21 through 23 of the Klemm Report. For each broad category of patient-care specialty, and for their total, it contains the total contract cost, total FTE contract cost, and average contract cost per FTE. The first column shows the expense to VA; the second and third columns offer some comparison with VA salaries.

TABLE 5.—PHYSICIAN SERVICES CONTRACT COSTS, FY 1988

Specialty	Total contract costs	Total FTE contract costs	Average contract costs per FTE
Medicine	$1,715,374	$461,280	$102,871
Anesthesiology	10,153,049	8,648,466	141,819
Surgery	3,221,577	501,984	186,366
Pathology	1,520,706	690,470	129,523
Radiology	18 833,445	9,775,289	133,313
Nuclear medicine	566,757	381,660	116,377
Psychiarty	153,408	132,170	110,719

TABLE 5.—PHYSICIAN SERVICES CONTRACT COSTS, FY 1988—Continued

Specialty	Total contract costs	Total FTE contract costs	Average contract costs per FTE
Neurology	339,241	154,400	151,538
Physiatry	19,200		
Total	36,512,757	20,745,718	133,421

Source: Exerpted from Tables IV-21 through 23, Klemm Report.

Of the $36.5 million spent by VA on contracting physician services in fiscal year 1988, almost $21 million was spent on contracts for which financial accounting allows cost per FTE calculations. (The other $15 million is accounted for by contracts that are specified by procedure, for example. VA Central Office believes that were cost per FTE calculations possible for those contracts, they would be similar to those shown in column three above.) That translates to an average cost of $133,421 per year FTE. From these data, an Anesthesiology FTE costs $141,819 in contract cost, while the most VA paid to employ such a specialist directly was approximately $83,950 (with a statutory maximum of $98,877).

There is a definite link, as one would expect, between the specialities that VA has to contract for and the scarce specialties designated for special pay purposes. Eighty percent of the total annual contract was expended for five of the six VA-designated scarce specialties: Anesthesiology, Orthopedic Surgery, Pathology, Physical Medicine and Rehabilitation, and Radiology.

Additional data (see reprinted Klemm Table IV-24 below) show that contract care is considerably more expensive per FTE than is VA staff care—for example, by factors of 13 percent for Internal Medicine and 73 percent for Anesthesia. The table shows that the FTE cost of VA-contracted care list between VA salaries and net income reported by the American Medical Association (AMA) for physicians in private practice.

TABLE 6.—COMPARISON OF AVERAGE CONTRACT COST PER FTE TO VA AND AMA AVERAGE SALARIES

[Amounts in dollars]

	1986	1987
Internal medicine:		
1. AMA	11,543	124,620
2. VA (paid)	75,990	78,019
3. VA (FTE)	104,973	87,960
Surgery:		
1. AMA	166,359	193,025
2. VA (paid)	80,583	83 121
3. VA (FTE)	109,599	106,775
Radiology:		
1. AMA	169,206	182,961
2. VA (paid)	85,187	87,266
3. VA (FTE)	125,583	132,845
Psychiatry:		
1. AMA	96,982	106,630
2. VA (paid)	77,655	79,831
3. VA (FTE)	108,925	
Anesthesiology:		
1. AMA	152,015	164,620
2. VA (paid)	82,357	85,455
3. VA (FTE)	132,835	147,754

TABLE 6.—COMPARISON OF AVERAGE CONTRACT COST PER FTE TO VA AND AMA AVERAGE SALARIES—Continued

[Amounts in dollars]

	1986	1987
Pathology:		
1. AMA	142,790	131,795
2. VA (paid)	85,034	86,727
3. VA (FTE)		11,368

Source: AMA, "Department of Manpower and Demographic Studies" VA (paid): "Master Files" for December 1986, 1987. VA (FTE): See table V-15.

Note: VA (PAID) salaries are for non-academic physicians.

Comparison of VA Physician Pay With Income of Other Physicians: An approximated, direct comparison of VA full-time salaries with two other physician groups is informative. Data from the AMA and the Association of American Medical Colleges (AAMC) show that private practice physicians net approximately, on average, 18 percent more income than academically employed physicians. Those physicians in academic settings earn, approximately, on average, 18 percent more than VA-salaried physicians.

It is generally accepted that private practice is not the appropriate comparison group for VA physician salaries; comparisons with academic physicians or physicians employed by health maintenance organizations, for example, are more reasonable. The next table, distilled from one in the Klemm report, presents average median salaries, by faculty rank, for VA physicians and physicians employed by academic medical centers.

TABLE 7.—AAMC AND VA AVERAGE CY 1987 MEDIAN SALARY, BY FACULTY RANK

Rank	AAMC	VA total pay	VA total compensation [1]
Instructor	$61,804	$83,794	$85,146
Assistant professor	83,448	85,294	87,028
Associate professor	105,088	85,794	89,794
Professor	124,813	89,794	93,294

[1] VA total pay is basic pay plus special pay. VA total compensation is total pay plus outside remuneration.

Source: Excerpted from Table V-2, Klemm report.

This chart shows that although VA provides a greater rate of total compensation for physicians at the instructor level (usually physicians who have recently completed residency) than do universities, salary compression within the VA system results in a great disparity between the salaries paid to VA physicians and medical school professors. The average full professor earns over $30,000 more than the average VA physicisn of comparable rank.

These data raise but do not answer the question of the salary level to which VA pay would have to be increased to reduce the substantial expense of contract care.

The Klemm report offers the following data on physician salaries at health maintenance organizations:

TABLE 8.—HMO (AS OF 1/88) AND VA (AS OF 12/87) COMPENSATION

Specialty	HMO salary	VA total pay
General medicine	$73,194	$78,547
Other specialities	100,446	83,800
Physician average	80,245	81,567

Source: Excerpted from Table V-5, Klemm report.

The table demonstrates that although general medical practicioners (such as General Internal and Family Practice) fare comparatively well at VA, specialists do not.

Special Problems With the Recruitment and Retention of Psychiatrists: The Committee has long noted the difficulties that VA has had in responding satisfactorily to questions about the quality of care in predominatly psychiatric facilities and in funding mental health research to what the Committee considers an adequate extent. VA's problems in recruiting and retaining psychiatrists are related to these difficulties. Although desiring high quality care for all the patients VA serves, the Committee has been particularly concerned in recent years about the way in which VA has carried out its responsibilities to veterans with psychiatric disease. Of the over one million discharges from VA hospitals in FY 1988, 23.2 percent had a psychiatric primary diagnosis, while yet another 12 percent had a secondary diagnosis in psychiatry. Those discharges accounted for 43.7 percent of all days of care in VA facilities in FY 1988. In addition, 13.5 percent of outpatient clinic visits were for mental health services.

VA facilities are authorized to employ 1,293 full-time and 728 part-time psychiatrists. At the end of December 1989, VA reports that there were 1,192 full-time psychiatrists and 699 part-time psychiatrists working in VHS&RA. Of those 1,981 employed, approximately 59 percent were board-certified. Surveys conducted by the National Association of VA Chiefs of Psychiatry (NAVACOP) and VA Central Office have shown increasing vacancy rates for psychiatry positions: 8 percent in 1986, over 14 percent in 1988, and almost 20 percent in January 1990.

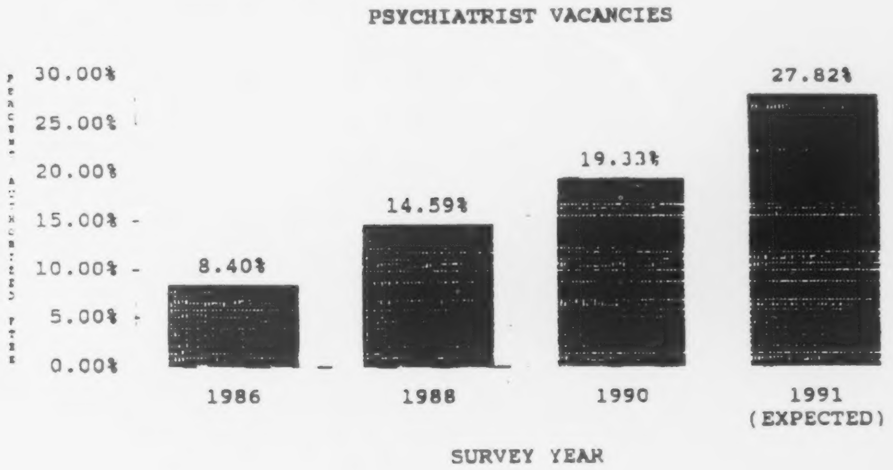
Dr. Spencer Falcon, in testimony on behalf of the American Psychiatric Association at the June 14 Committee hearing, stated that the turnover rate in VA psychiatry services was 17 percent overall, ranging from 13 percent in highly-affiliated institutions to 23 percent in unaffiliated or moderately-affiliated facilities. He described the following situation:

> Many of the chiefs responding to the NAVACOP survey have attempted to maintain workload without psychiatrists by temporarily hiring physician extenders, such as Physician Assistants and Nurse Practitioners, or physicians without psychiatric training, in vacant psychiatric positions. Over 148 psychiatrist positions in the 124 facilities surveyed are currently filled with these temporaries. The fact that these positions are reported as filled in Personal Service reports may account for the past discrepan-

cies between officially reported psychiatrist vacancy rates and those identified in field surveys.

A NAVACOP-supplied table is reprinted below.

TABLE 9.—PSYCHIATRIC VACANCIES BY PERCENT OF FTE



Figure

Psychiatrists Vacancies by Percent of FTEE

RESPONSES	ALL VAMC'S	LARGE UNAFFIL.	ALL UNAFFIL.	MOD. AFFIL.	HIGHLY AFFIL.
NUMBER VAMC'S RESPONDING	124	10	21	29	74
TOTAL FTEE'S REPRESENTED	1435.90	113.50	139.00	258.63	1038.28
PERCENT VACANCIES	**19.33%**	**29.47%**	**25.94%**	**25.19%**	**15.16%**
LEAVING BY '91 (% OF FTEE'S)	14.74%	15.86%	16.55%	15.85%	10.71%
STAFF TURNOVER RATE/ YR.	17.17%	23.32%	21.94%	23.32%	13.40%
SERVICES CLOSING BEDS	47.58%	60.00%	38.10%	41.38%	52.70%
QUALITY OF CARE REDUCED	71.43%	90.00%	84.21%	82.14%	63.89%
PSYCHIATRY SERVICE BEDS	24,243				
NUMBER OF BEDS CLOSED	2,459				

This table, providing 1990 data, describes great differences in vacancy and turnover rates among hospitals with different affiliation strengths, the largest difference being between highly affiliated and large, unaffiliated facilities. Vacancy rates, for example, are 15.2 percent in the former and 29.5 percent in the latter. Bed closures are also listed: 10 percent of VA psychiatry service beds are reported as being closed. It is the Committee's understanding that such decisions have generally been forced by lack of clinical staff.

The table also contains a measure of respondents' opinions regarding whether quality of care has been reduced. The 71.4-percent affirmative response is alarming.

Despite the above information, and VA's July 1990 *Recruitment Bulletin* which, nevertheless, lists 109 psychiatry vacancies, including 5 Service Chiefs or Assistant Chiefs, at 49 facilities, VA has not, up to this point, considered psychiatry a specialty for which it encounters extraordinary recruitment and retention difficulties.

The main competitors for psychiatrist employees are the State mental health systems. Having been faced with chronic recruitment and retention problems of their own, many States are revising their pay scales upward. These actions are placing VA in very uncompetitive situations in increasing numbers of States. According to data compiled by the National Association of State Mental Health Program Directors, there are ten states where psychiatrists could be paid more than $100,000 for a 40-hour work week. For a full-time VA staff psychiatrist to be paid the maximum allowed—$98,882—that physician would have to be board-certified, have at least eight years of VHS&RA service, and work at a location to which VA had granted the maximum geographic special pay.

The Committee notes that in the cost estimate accompanying the July 1, 1990, VA report on S. 2701, VA lists psychiatry as one of the specialties for which it intends to exercise its authority to pay scarce specialty pay. Information gleaned from this report and from conversations with VA Central Office staff leads the Committee to believe that if S. 2100 were enacted, VA would pay scarce specialty pay to psychiatrists at a rate of $15,000 per annum.

Current State of VA Dentist Recruitment and Retention

VA employed 903 dentists in 1989, of whom 93 percent were full-time. Of full-time dentists, 12.7 percent were board-certified, as were 41.3 percent of the part-time dentists. Faculty appointments were held by 26.2 percent of those working for VA full-time and 36.5 percent of the part-timers.

Full-time dentists face salary compression as do physicians; for example, 82.4 percent of full-time VA dentists in 1989 were in the Chief grade; 1.1 percent were in higher grades, 16.5 percent in lower.

Special pay is paid to 98.9 percent of all VA full-time dentists and to 58.7 percent of the part-time dentists.

VA's Annual Report to Congress presents the following average pay figures for dentists who received special pay.

TABLE 10.—VA PAY TO DENTISTS RECEIVING SPECIAL PAY, CY 1989

	Full-time	Part-time
Number	831	37
Percent receiving special pay	98.9	58.7
Average base pay	$68,596	$42,276
Average special pay	6,099	4,100
Total average pay	74,695	46,376

Source: Excerpted from Table 25, VA Annual Report to Congress on Special Pay.

Designated Scarce Specialties, for which scarce specialty pay is authorized, for VA dentists in 1989 and the numbers employed full- and part-time were:

TABLE 11.—NUMBER OF VA DENTISTS IN DESIGNATED SCARCE DENTAL SPECIALTIES, DECEMBER 1989

Specialty	Full-time	Part-time
Oral Surgery	58	22
Periodontics	30	9
Prosthodontics	82	5

Source: Excerpted from Table 18, VA Annual Report to Congress on Special Pay.

Even with special pay, VA dental specialists are paid approximately $30,000 less than their private practice counterparts, as the following table, which uses 1986 American Dental Association (ADA) data, shows. Although the data are a few years old, the Committee is unaware of reason to believe the relationship has changed.

TABLE 12.—PRIVATE PRACTICE AND VA DENTIST INCOME

Practice Type	Total
General practice:	
ADA	$73,410
VA	63,607
Specialist:	
ADA	103,990
VA	70,730

Source: Excerpted from Table V-8, Klemm Report, ADA 1987 survey data for 1986.

The Klemm report also provided salary comparisons of VA dentists with both HMO-employed dentists and academic dental faculty. Unfortunately, the validity of these comparisons is unknown. First, the report did not describe to what extent HMOs employ dentists. Second, the report clearly states that the academic salaries reported do not include outside remuneration which, it also states, is a commonplace and quite remunerative adjunct to salary.

Therefore, despite the thorough and useful job the Klemm Analysis Group did regarding physician staffing, comparable information was not provided for the dental services. There are disputes, moreover, between representatives of dental groups and VA regarding data on turnover, replacement, and vacancy rates which the Committee has not been able yet to unravel. Especially in view of the American Association of Dental Schools' testimony pointing to "the dramatic 37 percent decline in first year enrollments [in dental schools] since 1978," the Committee believes that VA dentist recruitment must be closely monitored.

Other Effects on Patient Care

Aside from the implicit concern about quality of care which is raised by the vacancy data, there are other effects of short-staffing. Lowered morale and potential errors made by tired staff are virtually inevitable. An effect that should be measurable is wait-list time for either clinic appointments or admissions. Testimony has described anecdotes of patients waiting five months for a dental appointment and then another six months for the work to be completed. There are long waits at certain hospitals for admissions to certain surgical services. A system for tracking these waits would add another useful tool to attempt to understand and measure to what extent dentist or physician recruitment and retention difficulties affect how many patients get care and the extent and timeliness of the care they do receive.

Underlying Principles for Legislation

The above data and analysis lead the Committee to the following conclusion regarding principles that should underlie VA's special pay program for doctors:

(1) Current basic salaries combined with special-pay levels are generally not competitive; increases in special-pay levels are needed.

(2) Length of service should be rewarded in a gradient that does not level off early in a potential VA career.

(3) Congress should authorize VA to make decisions on a nationwide or other geographic basis regarding the designation of specialties for which there is extraordinary difficulty in recruiting or retaining clinicians.

(4) VA should be authorized to grant special pay based on geographically-related difficulties in recruitment or retention.

(5) Board-certification should be rewarded.

(6) Executive medicine positions should be appropriately compensated.

(7) Some mechanism should exist for rewarding clinicians for exceptional skill or qualifications.

(8) Uniformity and equality of compensation must be ensured for similarly situated professionals.

(9) Retirement provisions should be structured to promote both recruitment and retention.

(10) No individual physician or dentist should lose pay as a result of the special pay changes which would be instituted by this bill.

(11) Psychiatry staffing should be studied closely.

Committee Modifications

The Committee bill contains a number of revisions from the text of S. 2701 that take into account many of the suggestions made in testimony and information provided by interested parties. Insightful and constructive comments were given by the American Association of Dental Schools, the American Dental Association, the American Psychiatric Association, the Association of American Medical Colleges, the Association of Professors of Medicine, the Department of Veterans Affairs, the National Association of VA Chiefs of Psychiatry, the National Association of VA Chiefs of Staff, the National Association of VA Physicians and Dentists, and numerous physicians, dentists, and administrators throughout the VA health-care system. The most significant changes made by the Committee were to:

(1) Phase-in new retirement credit more rapidly.

(2) Count part-time service proportionately in computing retirement credit.

(3) Increase dentist longevity special pay.

(4) Increase dentist scarce specialty ceiling.

(5) Add dollar minimums for Chief of Staff and Service Chief positions.

(6) Restore and increase special pay for Deputy Service Directors.

(7) Modify reporting requirements to include information on "abolished" positions.

Counting Special Pay Toward Retirement Calculations

As was noted earlier, VA physicians and dentists were first made eligible to receive special pay in 1975 with the enactment of Public Law 94-123. However, it was not until 1980 with the enactment of Public Law 96-330 that VA physicians and dentists were first granted the right to count special pay in their retirement calculations. Section 109 of that law permitted full-time VA physicians and dentists to choose to have their special pay counted for retirement purposes on a phase-in basis.

For those VA physicians and dentists who elected, under Public Law 96-330, to have a portion of special pay withheld for credit toward civil service retirement, the provisions of section 8334 of title 5, United States Code, relating to deductions from basic pay for retirement purposes, were applied to withhold from their pay a percentage of the amount of special pay (7 percent under current law) and deposit the amount withheld in the Civil Service retirement fund. Then, on a phased-in basis, a percentage of the amount of the special pay received was counted as basic pay for computation of the physician's or dentist's annuity. Public Law 96-330 stipulated that (1) only physicians or dentists who had completed 15 years of full-time VA service by the time of retirement would be eligible to count special pay toward retirement calculations; (2) a physician or dentist who retired after September 30, 1985, could count 50 percent of the amount of special pay received toward retirement; and (3) a physician or dentist who retired after September 30, 1990, could count 100 percent of the amount received for that purpose.

This phased-in approach to the counting of special pay toward retirement was intended to provide in incentive for physicians and dentists to continue their service to VA and to spread out the fiscal demands on the retirement fund (which pays an annuity based on the highest three years' salaries) due to the large pay increases that the 1980 law produced. Moreover, in return for the significantly larger annuities that would ensue, the Committee and Congress believed that the Department should receive a service return well in excess of three years in order to achieve the full increase. By tying the counting of special pay toward retirement to length of service to the Department, the Congress sought to ensure that physicians and dentists who elected this option would remain with the Department for 10 more years in order to receive the full retirement benefit.

Public Law 96-330 also allowed a VA physician or dentist to choose not to have any special pay withheld for retirement. Under that provision, a physician or dentist who selected this option could not reverse the decision at a later date.

Topics for Future Consideration and Continuing Attention

Other suggestions from witnesses and others will serve as guidelines to further monitoring of the physician and dentist pay situation. One, in particular, dealt with the deceptively simple notion of vacancy rate calculations and "vanishing" positions. For example, the National Association of VA Physicians and Dentists (NAVAPD) contends that over the last four years 102 dentists positions (and 228 dental auxiliary positions) have been abolished at 129 of the 170 facilities which answered their survey. Dr. Mark Tucker, in NAVAPD testimony, voiced similar concerns to what we had heard from the American Dental Association (ADA) and the American Psychiatric Association (APA): "There is no recruitment or retention problem on paper if the position is abolished whenever a dentist leaves. This is now the case VA-wide." VA's contention is that positions are abolished when workload justifies it, whereas NAVAPD, ADA, and APA contend that positions are abolished because either qualified replacements cannot be found at the going salary or VA does not want to fill the positions. The Committee intends to pursue this issue.

Another situation to be monitored is the Department's use of the discretion to designate specialties for which VA experiences extraordinary difficulty in recruiting and retaining physicians or dentists. By most measures, psychiatry would seem to qualify, yet VA has not yet declared it a scarce specialty. The Committee intends to seek ways to encourage VA to collect valid and reliable data, to provide timely and useful reports, and to take necessary action to enable medical facilities to hire and keep highly-qualified psychiatrists and other clinicians in sufficient quantities to provide high quality health care to veterans. The Committee doubts that a large, unaffiliated, predominantly psychiatric hospital can be said to be functioning in accordance with accepted practice standards without any board-certified psychiatrists on staff. Yet that appears to be the case in at least one VA facility.

Similarly, in regard to VA discretion, is the concern of VA dentists that general hospital practice is sufficiently more demanding than general, non-VA office practice, that hospital dentistry should be regarded as a specialty and that, therefore, compensation comparisons with other forms of dentistry are invalid. Since VA has—quite properly in the Committee's view—designated Spinal Cord Injury as a designated scarce specialty and since this is not a single, nationally-recognized "specialty", but a mingling of many other specialties (neurology, orthopedics, psychiatry, dermatology, physiatry, etc.), VA should perhaps rethink the application of such a practical definition of "specialties" to other areas as well.

The timing of physician and dentist compensation legislation coincides with the impending approach of October 1, 1990. Due to an attempt by Congress—successful to a large degree—to offer a strong incentive to physicians to stay more than a few years after the 1980 boost in special pay, those clinicians who remained the ten years required in order to achieve maximum credit of special pay toward retirement calculations are now ready to qualify for the full retirement benefit, Many doctor associations have predicted a mass exodus during the few months after October 1 unless VA or Congress acts to provide incentives to remain. The Committee believes that the reported bill is a well-designed plan which offers both fair compensation and incentives for retention. The Committee plans to track retention statistics carefully.

Committee bill

Replace the Cap on Special Pay: Current law imposes a cap on special pay which prohibits VA from paying any full-time physician more than $22,500 in special pay and from paying a full-time dentist more than $10,000 in special pay. The Committee bill would replace this cap with a cap that would prohibit VA from paying any physician or dentist a total salary (base and special pay combined) greater than the amount specified in section 102 of title 3, United States Code.

Increase the Rate of Special Pay for Full-Time Status: Under current law, full-time-employment status special pay is set at a rate of $6,000 per year for a full-time physician and $1,000 per year for a full-time dentist. The Committee bill would increase these rates to $9,000 for a full-time physician and $3,500 for a full-time dentist.

Eliminate Primary Special Pay: Under current law, full-time physicians and dentists are paid primary special pay at a rate of $7,000 per year for full-time physicians and a rate of $2,500 per year for full-time dentists. The Committee bill would eliminate primary special pay, but would provide that those full-time physicians and dentists employed by VA on the day prior to the effective date of this measure whose special pay consists only of primary, full-time, and longevity pay would not suffer any reduction in total special pay. The Committee believes these are the only incumbent physicians and dentists who would otherwise experience a pay reduction under the proposed plan. It is further the Committee's understanding that VA can offer a competitive package to entry-level physicians and dentists without primary specialty pay. Were a particular facility to have difficulty recruiting such clinicians, the director of that facility could request geographic or scarce specialty pay be approved by the CMD in order to overcome that difficulty.

Increase the Ranges of Rates for Longevity Pay: Under current law, full-time physicians and dentists receive special pay for length of service at the following rates:

	Rate
Full-time physicians:	
Length of service:	
2 years but less than 5 years	$1,000
5 years but less than 8 years	2,000
8 years or more	3,000
Full-time dentists:	
Length of service:	
2 years but less than 7 years	500
7 years or more	1,000

The Committee bill would replace these rates with the following ranges of rates:

	Range
Full-time physicians:	
Length of service:	
2 years but less than 4 years	$4,000 to $6,000
4 years but less than 8 years	6,000 to 12,000

8 years or more	12,000 to 25,000
Full-time dentists:	
Length of service:	
2 years but less than 4 years	1,300 to 2,000
4 years but less than 8 years	2,000 to 4,000
8 years or more	4,000 to 8,300

Within each of the above-specified ranges, the CMD would select a point at which to implement a uniform rate on a nationwide basis.

Increase the Rates of Scarce Specialty Pay: Under current law, VA may pay special pay for specialties for which it has extraordinary difficulty in recruiting and retaining qualified physicians and dentists, as determined by the CMD, within a range of $4,000 to $15,000 for full-time physicians and within a range of $2,000 to $7,500 for full-time dentists. The Committee bill would increase the range for scarce specialty pay for full-time physicians to $4,000 to $40,000 and increase the range for full-time dentists to $2,000 to $30,000. The Committee bill would also require the CMD to select a fixed rate within the ranges provided for each of the specialties the CMD designates as a scarce physician or dental specialty. Scarce specialty pay could be authorized on a nationwide, facility-specific, or other geographic basis.

Establish Special Pay for Specialty Certification for Dentists: Under current law, full-time physicians receive special pay for certification by a specialty board at a rate of $2,000 for the first certification and $500 for the second. The Committee bill would continue board certification special pay for physicians and establish such pay for full-time dentists, at the same rate as full-time physicians.

Geographic/Locality Pay: The Committee bill would increase the ranges of rates of special pay which the CMD may authorize for full-time physicians and dentists in geographic regions with exceptional recruitment and retention problems as follows:

	Current Law	S. 2100
Full-time physicians	$2,000 to $5,000	$2,000 to $15,000
Full-time dentists	1,750 to 2,500	1,750 to 5,000

The CMD would be authorized to select rates to apply on an individual facility or other geographic basis. In certain cases, the determination could be specialty-specific.

Establish Special Pay for Exceptional Qualifications: The Committee bill would establish a new category of special pay, called "Exceptional Qualifications," under which the CMD may authorize payment of special pay of up to $15,000 for a full-time physician and up to $5,000 for a full-time dentist, to the extent that overall total pay allowed for all other applicable factors—full-time status, longevity, scarce specialty, service in specific geographic area, board certification, and service in an Executive Medicine position—is not exceeded.

Increase the Rates of Executive Medicine Special Pay: The Committee bill would increase the rates of Executive Medicine special pay for full-time physicians and dentists as follows:

	Current law	S. 2100
Full-time physicians:		
Service chief	$9,900	$ 4,500 to $15,000
Chief of staff	12,600	14,500 to 25,000
Department service director	13,000	22,500
Service director	13,500	25,000
Department assistant CMD	14,400	27,500
Assistant CMD	15,300	30,000
Associate department CMD	15,300	35,000
Department CMD		40,000
Chief medical director		45,000
Full-time dentists:		
Service chief	2,750	3,000 to 5,000
Chief of staff	3,500	3,500 to 8,000
Department service director	3,625	8,000
Service director	3,750	9,000
Department assistant CMD	4,000	10,000
Assistant CMD	4,250	10,000

Where a range is listed the CMD would be required to choose a point within each range for each category of relevant employee on a nationwide basis.

The Committee bill would also (1) expand Executive Medicine special pay for Assistant Chief Medical Directors in VA Central Office ($30,000 for physicians, $10,000 for dentists) to include comparable positions as determined by the CMD; (2) provide for the calculation of special pay for physicians or dentists assigned to Executive Medicine positions in VA Central Office who are also placed in field positions, and for other serving in dual positions, in proportion to the amount of time devoted to each position; and (3) give the CMD discretion to pay scarce specialty pay to a VA Central Office executive physician or dentist upon the determination that those special skills are necessary in order for that executive to carry out the assigned VA Central Office responsibilities.

Revise Payment of Special Pay for Part-Time Physicians: Under current VA practice, eligible part-time physicians and dentists receive special pay for longevity, scarce-specialty, Executive Medicine, board-certification, and geographic-area factors at rates which are equal to three-quarters of the rates at which full-time physicians and dentists receive such pay. Physicians and dentists working less than half-time for VHS&RA are not paid special pay at all. The Committee bill would direct that a physician or dentist working at least half-time but less than full-time be paid special pay for the same categories as apply to those working full-time (except for full-time service) in direct proportion to hours worked. In addition, the Committee bill would authorize the CMD to pay a physician or dentist employed less than half-time special pay (except for full-time pay) in proportion to hours worked when the CMD determines that to be the most cost-effective alternative for VA to acquire the services in question.

Revisions to VA's Annual Report on Special Pay: The Committee bill would require the Secretary to include the following items in VA's annual report to the House and Senate Veterans' Affairs Committees on use of the special pay authority:

(1) A review of the use of the authorities provided in S. 2100.

(2) The Department's plans for the use of the authorities in the current and next fiscal years.

(3) A description of the amounts paid in each category of special pay.

(4) A list of the geographic areas and the scarce specialties for which special pay was paid in the previous fiscal year, is being paid in the current fiscal year, and is expected to be paid in the following fiscal year.

(5) The numbers of physicians and dentists who changed from full-time to part-time employment status, from part-time to full-time, or left VHS&RA employment.

(6) The numbers of positions abolished and created, by specialty, and summaries of the reasons for such actions.

(7) The number of unfilled positions in each specialty, the length of time unfilled, a summary of the reasons and, in the case of any specialty not designated as a scarce specialty, an explanation (including comparisons with other specialties that have been so designated) of why the specialty has not been so designated.

(8) A discussion of whether provision for periodic COLAs is needed to implement these special pay provisions in order to recruit and retain high-quality physicians and dentists.

Reimbursement of Continuing Education Expenses: The Committee bill would (1) require the CMD to reimburse full-time, board-certified physicians and dentists, and authorize the CMD to reimburse other VHS&RA physicians and dentists, for up to $1,000 of expenses for continuing education; and (2) authorize the CMD to reimburse amounts greater than $1,000 if the CMD deems appropriate.

Revision of Provisions for Counting Special Pay Toward Retirement. The Committee bill also contains provisions relating to the relationship between special pay and retirement benefit computations which, would (1) extend the option of counting special pay, on a phased-in basis, for retirement pay to include the increase of special pay received under this legislation; (2) allow physicians and dentists who work for VA on a part-time basis to include special pay in retirement calculations; and, (3) permit any physician or dentist who was with VA in 1980 and who opted not to have his or her special pay counted for retirement purposes to choose to have that pay so counted prospectively.

1. *Counting additional special pay for retirement:* S. 2701 as introduced would have provided for additional special pay to be counted toward retirement under benefit computations restrictions very

similar to those found in Public Law 96-330. Under S. 2701, special pay received from 1980 through the effective date of the new law would have been treated in accordance with current law. However, in order to count the new increases in special pay toward retirement, a physician or dentist would have had to have completed at least 15 years of full-time service to VA by the time of retirement, with 50 percent of such additional special pay counting toward retirement if the physician or dentist retired 5 years after the date of enactment, and with 100 percent of such pay counted if the physician or dentist retired 10 years after the date of enactment.

Based on testimony presented by VA physicians and dentists at the Committee's June 14 hearings, the Committee bill was revised to change the phasing-in of special pay for retirement (the 15-year requirement was not altered) so as to enable a physician or dentist to count additional special pay at a rate of 20 percent for every 2 additional years of service after the effective date of the new law until the physician or dentist has completed 10 additional years of service, after which time the physician or dentist could count 100 percent of special pay toward retirement.

2. *Part-time physicians or dentists:* As introduced, S. 2701 continued to restrict the opportunity for VA physicians or dentists to include special pay for retirement purposes to those who served at least 15 years in a full-time capacity. However, again based on concerns raised at the June 14 hearing, the Committee bill was modified to enable part-time physicians and dentists to count special pay toward their retirement benefits. This modification would enable a part-time physician or dentist who had completed 15 years of either part-time or a combination of full- and part-time service to VA by the time of retirement to count special pay toward retirement, subject to the same phase-in provisions as would apply to full-time physicians and dentists.

This provision should ensure that special pay for full- and part-time physicians and dentists is administered in an equitable and consistent manner and is consistent with other provisions of the legislation which permit—with the exception of special pay for full-time status—part-time physicians and dentists to receive special pay in proportion to the amount that they would receive if employed full-time.

3. *Opportunities to reverse decision not to include special pay for retirement:* As discussed earlier, under Public Law 96-330, VA physicians or dentists who were full-time employees on October 1, 1980, could elect not to have special pay counted as basic pay for retirement and insurance purposes. Under that law, such a decision was irrevocable. However, based on concerns expressed to the Committee about possible confusion or incorrect advice received by some VA physicians and dentists in 1980 about the impact and reversibility of the decision, the Committee bill would provide a one-time opportunity for such VA physicians and dentists now to make a new decision. Under the Committee bill, if a physician or dentist now decides to have special pay counted for retirement purposes, the physician or dentist would be able to count such pay received after the effective date of the Committee bill, subject to the same phase-in requirements. Although some doctors in this position had sought to have legislation enacted to give them the option retroac-

tive to 1980, the Committee believed that providing such an opportunity after the fact would give those doctors an inequitable chance to structure their decisions based on known economic circumstances that those who made irrevocable decisions to have special pay counted did not have knowledge of at the time of their decisons.

Comparison Chart

Tables 13a (physicians) and 13b (dentists), below, which were developed by Committee staff for ease of comparison, which contain columns for the special pay provisons in current law, in H.R. 4557, in S. 2732 (the Administration-proposed bill), in S. 2701, and in the Committee bill.

TABLE 13a.—COMPARISON OF FULL-TIME PHYSICIAN SPECIAL PAY PROVISIONS IN CURRENT LAW, IN H.R. 4557, IN S. 2701, IN S. 2732, AND IN S. 2100

[Dollars amounts in thousands]

	For special pay						For total pay			
	Current law		H.R. 4557 [1]		S. 2701 [2]		S. 2773 [3]		S. 2100 [2], [4]	
	Year	Amount	Year	Amount	Year	Amount	Year	Amount	Years	Amounts
Cap on pay		$22.5								
Primary		7.0		(5)		(5)		$2.0	(5)	
Full-time		6.0		$9.0		$9.0		7.0		$9.0
Length of service	2–5	1	2–4	3–6	2–4	4–6	0–2	1	2–4	4–6
	5–8	2	4–8	6–12	4–8	6–12	2–4	3.5	4–8	6–12
	8+	3	8–15	12–18	8+	12–25	4–6	7	8+	27.5
			15+	15–25			6–10	10		
							6–10	10		
							10–15	12.5		
							15–20	14.5		
							20+	16.5		
Scarce specialty		$4–15.5		0–40		4–40		0–3.5		24–40
Executive medicine:										
Service chief		9.9		0–15		0–15		4.5–14.5		4.5–15
Chief of staff		12.6		0.25		0.25		14.5–20		14.5–25
Medical center director								0–25		
Deputy service director		13.0						25		22.5
Service director		13.5		25		25		30		25.0
Deputy ACMD		14.4		30		27.5		30		27.5
Assistant CMD		15.3		30		30		35.5		30.0
Associate deputy CMD		15.3		35		35				35.0
Deputy CMD				40		40				40.0
CMD				45		45				45.0
Specialty certification:										
First		2.0		2.0		2.0		2.0		2.0
Plus second		0.5		0.5		0.5		0.5		0.5
Geographic location		2–5		0–17		2–15		0–5		2–15
Exceptional qualification						0–15				0–15

[1] Total of provisions listed.
[2] Total of provisions listed except for exceptional qualifications.
[3] This Executive level I.
[4] 3 USC 101.
[5] None.

TABLE 13b.—COMPARISON OF FULL-TIME DENTIST SPECIAL PAY PROVISIONS IN CURRENT LAW, IN H.R. 4557, IN S. 2701, IN S. 2732, AND IN S. 2100

[Dollar amounts in thousands]

	For special pay						For total pay			
	Current law		H.R. 4557 [1]		S. 2701 [2]		S. 2732 [3]		S. 2100 [2, 4]	
	Years	Amount	Years	Amount	Years	Amount	Years	Amount	Years	Amount
Cap on pay		$10								
Primary		2.5		(5)		(5)		$2.5		(5)
Full-time		1.0		$3.5		$3.5		1.0		$3.5
Length of service (years)	2–7	0.5	2–7	0.8	2–7	0.5–0.8	2–7	0.5	2–4	1.3–2.0
	7+	1.0	7+	1.6	7+	1.0–1.6	7+	1.0	4–8	2.0–4.0
									8+	4.0–8.3
Scarce specialty		2–7.5		0–20		2–20		2–7.5		2–30
Executive medicine:										
Service chief		2–75		0–5		0–5		3.0–5.0		3.0–5.0
Chief of staff		3.5		0–9		0–8		3–5		3.5–8.0
Deputy service director		3.625						3.625		8.0
Service director		3.75		0–9		9		3.75		9.0
Deputy assistant CMD		4.0		0–10		10		4.0		10.0
Assistant CMD		4.25		0–10		10		4.25		10.0
Associate deputy CMD										
Deputy CMD										
CMD										
Specialty certification:										
First		(5)		2.0		2.0		(5)		2.0
Plus second		(5)		0.5		0.5		(5)		0.5
Geographic/location		1.75–2.5		0–5		1–75–5		1–75–2.5		1–75–5
Exceptional qualifications		(5)		(5)		0–5		(5)		0–5

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[1] Total of provisions listed.

[2] Total of provisions listed except for exceptional qualifications.

[3] Executive level I.

[4] 3 USC 102.

[5] None.

The following tables (Table 14a through Table 14h) illustrate the potential impact of section 262 on the salaries of representative VA physicians and dentists. With respect to provisions of section 262 which would establish ranges of rates, the rates used are the rates the Committee believes VA will use, based upon both VA's official report dated July 11, 1990 on S. 2701 and conversations with VA Central Office staff.

TABLE 14a.—FULL-TIME RADIOLOGIST, BOARD-CERTIFIED, NEW HIRE

[Amounts in dollars]

	Current law	S. 2100
Primary	7,000	
Full-time	6,000	9,000
Scarce specialty	13,500	35,000
Board certification	2,000	2,000
Less amount over cap	(5,000)	
Total special pay	22,500	46,000
Base (chief 10)	76,982	76,982
Total pay	99,482	122,982

TABLE 14b.—FULL-TIME INTERNIST, BOARD-CERTIFIED, 15 YEARS OF VA SERVICE

[Amounts in dollars]

	Current law	S. 2100
Primary	7,000	
Full-time	6,000	9,000
Longevity	3,000	18,500
Board certification	2,000	2,000
Total special pay	18,000	29,500
Base pay (chief 10)	76,982	76,982
Total pay	94,482	106,482

TABLE 14c.—PART-TIME ORTHOPEDIC SURGEON, HALF-TIME, BOARD-CERTIFIED, 3 YEARS OF VA SERVICE

[Amounts in dollars]

	Current law[1]	S. 2100
Longevity	500	2,500
Scarce specialty	6,750	20,000
Board certification	1,000	1,000
Total special pay	8,750	23,500
Base pay (chief 10)	38,491	38,491
Total pay	46,741	61,991

[1] VA's current practice is to calculate special pay for part-time physicians and dentists using rates equal to three-quarters of the rates applicable to full-time physicians and dentists. Thus, the actual total pay for the physician described above would be $44,678.

TABLE 14d.—FULL-TIME SERVICE CHIEF—PSYCHIATRY, BOARD-CERTIFIED, 7 YEARS OF VA SERVICE

[Amounts in dollars]

	Current law	S. 2100
Primary	7,000	
Full-time	6,000	9,000
Longevity	2,000	9,000
Scarce specialty	0	15,000
Executive medicine	13,500	15,000
Board certified	2,000	2,000
Less amount over cap	(8,000)	
Total special pay	22,500	50,000
Base pay (chief 10)	76,982	76,982
Total pay	99,482	126,982

TABLE 14e.—FULL-TIME CHIEF OF STAFF BOARD-CERTIFIED, CARDIOLOGIST, 12 YEARS OF VA SERVICE

[Amounts in dollars]

	Current law	S. 2100
Primary	7,000	
Full-time	6,000	9,000
Longevity	3,000	18,500
Executive medicine	12,600	25,000
Board certification	2,000	2,000
Less amount over cap	(8,100)	
Total special pay	22,500	54,500
Base pay (chief 10)	76,982	76,982
Total pay	99,482	131,482

TABLE 14f.—ASSOCIATE CHIEF MEDICAL DIRECTOR FOR GERIATRICS, BOARD-CERTIFIED, 20 YEARS OF VA SERVICE

[Amounts in dollars]

	Current law	S. 2100
Primary	7,000	
Full-time	6,000	9,000
Longevity	3,000	18,500
Executive medicine	15,300	30,000
Board certification	2,000	2,000
Less amount over cap	(10,800)	
Total special pay	22,500	59,500
Base pay (exec. V)	78,200	78,200
Total pay	100,700	137,700

TABLE 14g.—FULL-TIME ORAL SURGEON, BOARD-CERTIFIED, NEW HIRE

[Amount in dollars]

	Current Law	S. 2100
Primary	2,500	
Full-time	1,000	3,500
Scarce specialty	7,500	20,000

TABLE 14g.—FULL-TIME ORAL SURGEON, BOARD-CERTIFIED, NEW HIRE—Continued

[Amount in dollars]

	Current Law	S. 2100
Board certification		2,000
Less amount over cap	(1,000)	
Total special pay	10,000	25,500
Base pay (chief 8)	73,034	73,034
Total pay	83,034	98,534

TABLE 14h.—FULL-TIME GENERAL DENTIST, BOARD-CERTIFIED, 10 YEARS OF SERVICE

[Amount in dollars]

	Current law	S. 2100
Primary	2,500	
Full-time	1,000	3,500
Longevity	1,000	5,850
Board certified		2,000
Total special pay	4,500	11,350
Base pay (chief 10)	76,982	76,982
Total pay	81,482	88,332

Conclusion

Many highly skilled doctors work for VA; not all of them can be rewarded financially at a level that would match what some physicians and dentists can earn in the private market. What should be offered to all of them, however, is pride in VA and trust that VA and Congress are trying their best to provide fair and appropriate treatment. This approach will work to the benefit of all veterans receiving VA health care.

Costs: The Congressional Budget Office estimates that the enactment of title II.D. of the Committee Bill would entail estimated costs of $34 million in budget authority and $32 in outlays in fiscal year 1991 and total estimated costs of $269 million in both budget authority and outlays in fiscal years 1992–1995.

TITLE III—EDUCATION AND EMPLOYMENT

Postponement of Time Limitation on Counting of Vietnam-Era Veterans in Disabled Veterans Outreach Program Specialists Funding Formula

Section 301 of the Committee bill, which is derived from section 401 of S. 2100 as introduced, would extend through the end of calendar year 1993 the inclusion of veterans of the Vietnam era as an element of the statutory formula determining the number of disabled veterans' outreach program specialists (DVOPs) funded by the Federal Government.

Background

Under section 2003A of title 38, the Secretary of Labor is annually required to make available for use in each State sufficient funds to support the appointment of one DVOP "for each 5,300 veterans of the Vietnam era and disabled veterans" residing in the State. Under section 2001(2) of title 38, "veteran of the Vietnam era" is defined for purposes of chapter 41 (Job Counseling, Training, and Placement Service for Veterans), and thus for this funding formula, by reference to the definition in section 2011(2), which is also used in chapter 42 (Employment and Training of Disabled and Vietnam Era Veterans). Under that definition, a "veteran of the Vietnam era" is "an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era." However, that provision further provides, "No veteran may be considered to be a veteran of the Vietnam era under [the definition] * * * after December 31, 1991." (Section 2014(f) provides an exception to this expiration date for purposes of the Veterans Readjustment Appointment authority.)

Since the number of Vietnam-era veterans is a basic element of the formula for determining the amount of funds provided to States for the employment of DVOPs, termination of the counting of Vietnam-era veterans for this purpose would drastically reduce the DVOP allocation for fiscal years 1992 and beyond. In FY 1992, it is projected that there will be about 8.7 million Vietnam-era veterans and 2.21 million disabled veterans residing in the United States. If Vietnam-era veterans are counted, Federal funding for 1,895 DVOP's would be required; if they are not, Federal funding for only 438 would be required.

Committee bill

It is the Committee's view that the staffing level of the DVOP program should be established as the result of considered policy decisions rather than the arbitrary application of a definitional sunset date and that a precipitous 1992 reduction would impose an unjustified and inappropriate hardship on the DVOP staff and the veterans they serve. Thus, this measure would extend through the end of calendar year 1993 the inclusion of veterans of the Vietnam era as an element of the statutory formula for the Federal funding of disabled veterans' outreach program specialists (DVOPs). This change would assure the stability of DVOP staffing through the FY 1993 budget cycle and provide the opportunity for rethinking of the formula without the threat of an imminent collapse of Federal support for the program.

It may be appropriate to consider modifying the DVOP funding formula with an aim to ensuring that it provides a method of resource allocation responsive to the current job counseling, training, and placement requirements of veterans who are most in need of such services. Thus, the Committee plans, during the time the proposed extension of the current formula would afford, to consider a long-term solution.

Cost: According to CBO, the enactment of section 301 would entail no significant costs in FY 1991.

Expansion of Employment and Training Information Program

Section 302 of the Committee bill, which is derived from Amendment No. 1575 to S. 2100, would authorize the Secretary of Labor, under certain circumstances, to expand beyond the current 10-State limit the transition assistance program (TAP) of employment and training assistance and information for servicemembers nearing separation from active duty that was established under section 408 of the Veterans' Benefits Amendments of 1989 (Public Law 101-237), which was enacted on December 18, 1989.

Background

Section 408 of Public Law 101-237 required that during a three-year period, beginning January 1, 1990, the Secretary of Labor, in conjunction with the Secretary of Veterans Affairs and the Secretary of Defense, conduct a pilot program in not more than ten geographically dispersed States to furnish active-duty military personnel with employment and training assistance and information during the 180-day period leading up to their separation from the Armed Forces. The pilot program began operation in May 1990.

The pilot program legislation was fashioned in the summer of 1989, before it became so clear—as it has more recently in the wake of dramatic changes in Eastern Europe and the Soviet Union—that our military personnel needs will likely decrease substantially in the coming years. The Committee is still convinced that the pilot concept of testing a transition-assistance program is the most effective means of ensuring the best long-term use of limited resources but believes that the ten-State limitation may soon prove too restrictive, leaving thousands of men and women in need of timely assistance that could shorten the time between separation from military service and gainful civilian employment. The Secretary of Labor should, under certain circumstances, be able to expand the pilot program in order to meet the growing need for this kind of transition assistance.

Amendment No. 1575 to S. 2100 would authorize the Secretary of Labor to expand the TAP to more than ten geographically dispersed States, but only if the Secretary determines, after consultation with the Secretary of Defense and the Secretary of Veterans Affairs, that (a) the program has been successful in providing beneficial information and training to those who were about to be separated from the Armed Forces; (b) the expansion is necessary to meet more effectively the needs of increasing numbers of those who will be separating in the future; (c) the program has received sufficient contributions of funds, personnel, and other resources from the Departments of Labor (DoL), Defense (DoD), and VA and, if expanded, will continue to receive sufficient resources from the three departments; and (d) the expansion will not interfere with the provision of services or other benefits to eligible veterans. The Secretary of Labor would be required to provide the Congressional Committees on Veterans' Affairs with 60 days' advance notice of any expansion, including the location of the sites and the bases on which the determinations were made, and request participation in the program and additional resources necessary for it from DoD and VA and, to the maximum extent feasible, representatives of veterans' service organizations, and coordinate the resources that are provided.

The Committee is concerned that DoL's Veterans' Employment and Training Service (VETS)—and, in particular, DoL-funded DVOPs and LVERs—not be called upon to bear a disproportionate share of the costs of TAP or its expansion. The resources of VETS and of the DVOP and LVER programs have not been calculated on the basis of their routinely taking on sole responsibility for this effort and their doing so could result in a substantial reduction in the resources available to carry out their primary responsibility—meeting the employment assistance needs of veterans.

Moreover, it is clear to the Committee that DoD has a significant responsibility to assist its own personnel who are nearing release—particularly those facing premature release—from active duty. Similarly, VA has an obligation, under section 241(3) of title 38, to help in providing such personnel with information about the education, training, health-care, readjustment, and other opportunities and benefits, and, for those who are disabled, the vocational rehabilitation benefits that will be available to them as veterans.

During its May 11, 1990, hearing on various veterans' employment, education, and home-loan issues and bills, the Committee considered the TAP expansion provisions as embodied in both Amendment No. 1575 and S. 2546. At that time, veterans service organizations generally supported both provisions as they saw a need to expand the 10-state limitation of the existing pilot program. The Disabled American Veterans, Paralzyed Veterans of America, and the Interstate Conference of Employment Security Agencies specifically supported attaching to any expansion of the pilot program preconditions that would protect services to veterans—preconditions not included in S. 2546. The Non Commissioned Officers Association preferred Amendment No. 1575 to S. 2546. However, concern was voiced that the 60-day notice requirement could prove an impediment to a major demobilization.

Committee bill

The Committee bill incorporates the provisions of Amendment No. 1575 and, in response to concerns raised at the May 11, 1990 hearing, adds a provision that would authorize the Secretary of Labor, upon the request of the Secretary of Defense, to waive the 60-day Congressional notice provision in cases in which the Secretary of Labor determines that a waiver is necessary in order to respond to an urgent need for expansion as a result of a major demobilization. In case of such a waiver, the Secretary, not later than the date on which the expansion is initiated, must provide a report with the information described in the 60-day requirement and the reasons for the waiver.

The Committee bill would strike a balance between preserving the programmatic development and evaluation features of a pilot program and meeting an increasing demand with finite resources by authorizing the Secretary of Labor to expand the section 408 pilot program to more than ten geographically-dispersed States, but only if the Secretary, after consultation with the Secretary of Defense and the Secretary of Veterans Affairs, makes the determinations described above that are designed to protect the basic mission and purpose of the VETS' existing program responsibilities.

By incorporating these protections, the Committee bill would enable DoL to help meet a Federal responsibility to offer transition assistance to those who are being separated from military service without abandoning the obligation to assist those who have already been discharged and, in most instances, served their full tours of duty. It would also provide an orderly and efficient means of meeting that responsibility together with a fair approach for distributing the resource burden among the three Federal departments involved.

Cost: According to CBO, the enactment of section 302 would entail estimated costs of $2 million in both BA and outlays in FY 1991 and total estimated costs of $14 million in both BA and outlays in FYs 1991-1995.

Vocational Rehabilitation for Disabled Servicepersons Pending Discharge

Section 303 of the Committee bill, which is derived from section 102 of S. 2483, would expand VA's authority to provide vocational rehabilitation services to servicemembers prior to their separation from active duty so as to include servicemembers who are receiving outpatient medical care or who are being treated at Department of Defense (DoD) expense in medical facilities not controlled by DoD.

Background

Under section 1502(1)(B) of title 38, VA now has the authority to provide vocational rehabilitation services to individuals being treated for a service-connected disability prior to their separation from active duty. This authority allows VA, and the future veteran, and early start on the vocational rehabilitation needed to overcome the employment handicap imposed by a service-connected disability. However, this authority is limited to individuals actually hospitalized in a DoD medical facility.

Some servicemembers with severe or unique injuries or illnesses may be best treated in a non-DoD facility. Other servicemembers may be transferred to a VA facility near their home for a period of convalescence prior to their release from active duty. Many medical conditions which used to be treated on an inpatient basis are now treated on an outpatient basis. Under current law VA has no authority to provide vocational rehabilitation services to these servicemembers prior to their discharge, even if early action would be in the veteran's best interest.

Committee bill

Section 303 of the Committee bill would provide VA clear authority to provide vocational rehabilitation services to servicemembers being treated in non-DoD facilities for a service-connected disability pending their discharge. Such non-DoD care would still be required to be under contract between DoD and the care provider. In addition, section 303 would allow VA to provide vocational rehabilitation services to servicemembers being treated on an outpatient basis prior to their discharge.

The Committee believes the additional authority provided by this provision would allow DoD to continue to provide servicemembers with appropriate medical care while ensuring that VA will have authority to provide them with appropriate vocational rehabilitation services.

Cost: According to CBO, the enactment of section 303 would entail no significant cost.

Extension of the Period Preceding Automatic Disenrollment Under Chapter 32

Section 304 of the Committee bill, which is derived from section 103 of S. 2483, would extend by one year the date on which certain eligible veterans are automatically disenrolled from the program of educational assistance provided under chapter 32 of title 38.

Background

Veterans who participate in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP), provided under chapter 32 of title 38, contributed up to $2,700 to an educational assistance account during their active-duty service. Educational benefits (based on the veteran's contribution and matching funds provided by the government) are paid to participants who pursue an approved program of education. Participants may disenroll from the program and receive a refund of their unused contributions. Section 1632(b)(1) of title 38 requires automatic disenrollment (and refund) at the end of the ten-year period of eligibility, which begins when a veteran is released from active duty.

VA will normally award education benefits for training received up to one year prior to the date a claim for benefits is received (38 CFR 21.4131(a)(2)). However, VA has construed the requirement for automatic disenrollment from VEAP ten years after release from active duty as barring any payment of benefits if the claim is filed after the required automatic disenrollment. Thus, the current statutory requirement for automatic disenrollment serves to bar benefit payments, which would otherwise be made, in the case of veterans who enroll in an approved program of education in the last year of their ten-year period of eligibility if their claim is filed after the ten-year "delimiting date".

Committee bill

Section 304 of the Committee bill would extend by one year the period preceding automatic disenrollment. This would allow VA to pay benefits based on claims received after the ten-year eligibility period has expired but within one year after the training. Automatic disenrollment would not occur until after the latest date on which a veteran could file a timely claim.

Cost: According to CBO, the enactment of section 304 would entail no significant cost.

Provision for Certain Individuals to Eliminate an Overpayment by Performing Work-Study Services

Section 305 of the Committee bill, which is derived from section 104 of S. 2483, would permit an individual to enter into an agreement to perform work-study services and have the allowances otherwise payable credited to an account receivable resulting from an overpayment of VA education, rehabilitation or training benefits.

Background

Section 1685 of title 38 authorizes VA to pay an additional educational assistance allowance (called a "work-study allowance") to veteran students pursuing a program of education under chapters 30, 31, or 32. In return for the allowance, the students agree to perform certain services for VA. The total amount of the allowance varies with the number of hours to be worked. The student and VA enter into an agreement specifying, within statutory limits, the hours to be worked.

Committee bill

Section 305 of the Committee bill would provide authority for an individual with a debt to VA resulting from overpayment of benefits under chapters 30, 31, 32, 34, or 35 of title 38 or chapter 106 of title 10 to enter into an agreement to provide work-study services to VA. VA would reduce the debt by an amount equal to the work study allowance which would otherwise be payable.

In the case of agreements made under this provision, the Committee bill would allow VA to waive restrictions on the number of hours and periods during which services can be performed and the requirement that the work-study participant be in pursuit of a program of education while performing work-study services. The Committee believes this new authority would benefit both the government and the individual since it would allow individuals with time, but limited funds, to satisfy their debts with VA.

Cost: According to CBO, the enactment of section 305 would entail no cost.

Educational Assistance for Flight Training

Section 306 of the Committee bill, which is identical to S. 2537, would extend to participants in the Post-Vietnam-Era Veterans' Educational Assistance Program (chapter 32 of title 38 (VEAP)) the same opportunity currently available on a trial basis, through fiscal year 1994, to participants in the Montgomery GI Bill (chapter 30 of title 38 and chapter 106 of title 10 (MGIB)) to use their education benefits for the pursuit of flight training.

Background

In 1989 Congress enacted legislation, in section 422 of Public Law 101-237, which authorized, on a trial basis, the use of MGIB benefits for flight training. That legislation was designed to expand employment options available to veterans by giving them the opportunity, through the use of their VA educational assistance benefits, to pursue a program of education leading to the vocational goal of professional pilot.

Committee bill

Section 306 of the Committee bill builds on last year's law by extending flight training benefits to chapter 32 participants who fulfill the same eligibility and other requirements as are applied to MGIB participants. Thus, the individual must (a) have a valid pilot's license, (b) meet the medical requirements for a commercial pilot's rating, and (c) be pursuing training recognized as being necessary to obtaining a vocation in the aviation industry, and the training must meet Federal Aviation Administration standards and be approved by the relevant State Approving Agency. As in last year's measure extending flight training authorization to MGIB participants, the educational assistance allowance under this provision would be equal to 60 percent of the tuition and fees charged for dual flight instruction.

This provision would ensure that veterans who entered the service on or after January 1, 1977, and before July 1, 1985, and are eligible for VEAP, have the same opportunity to use their educational benefits for flight training as those who are eligible for MGIB benefits.

Cost: According to CBO, the enactment of section 306 would entail no significant cost.

Vietnam-Era GI Bill Eligibility for Certain Service Academy Graduates

Section 307 of the Committee bill, which is derived from section 4 of H.R. 1358 as passed by the House of Representatives on October 2, 1989, would extend eligibility for Vietnam-era GI Bill (chapter 34) benefits to members of the 1977 and 1978 graduating classes of the service academies and to 1978 Senior Reserve Officer Training Corps (SROTC) graduates.

Background

Public Law 94-502, enacted on October 15, 1976, established the Post-Vietnam Era Veterans Educational Assistance Program (VEAP) in chapter 32 of title 38. Under that legislation, individuals entering on active duty after December 31, 1976, generally were eligible to participate in VEAP and were ineligible for chapter 34 benefits. Public Law 94-502 retained chapter 34 eligibility for those who entered active duty after December 31, 1976, but had previously contracted with the Armed Forces to enter on active duty and were enlisted in or assigned to a reserve component before January 1, 1977, and entered on active duty within 12 months after that date. However, 1977 and 1978 service academy graduates and 1978 SROTC graduates—all of whom had, at the outset of their third year of undergraduate study, entered upon their commitments to active-duty service at a time when chapter 34 eligibility was available to them—did not meet the above criteria for chapter 34 eligibility. S. 2011, as approved by the Senate in 1988, included a provision designed to extend chapter 34 eligibility to 1977 and 1978 service academy and 1978 SROTC graduates who had demonstrated—as evidenced by their participation in VEAP—an interest in earning education benefits during their service. This Senate-passed provision, however, failed to gain acceptance by the House.

On October 2, 1989, the House passed in section 4 of H.R. 1358 a similar measure but without the VEAP restriction contained in the 1988 Senate-passed provision. It was not accepted by the Senate for enactment last year. Extensive negotiations over the past two years has failed to produce a compromise agreement acceptable to both Houses.

Committee bill

In the interest of enacting legislation on this matter, the Committee has agreed to adopt the House provision as passed last year in H.R. 1358. Thus, section 307 of the Committee bill would (a) effective January 1, 1977, extend chapter 34 eligibility to all 1977 and 1978 service academy graduates and 1978 SROTC members; (b) require refunds to these individuals of their unused contributions to the VEAP accounts; and (c) require payment, to those who received educational assistance under VEAP, of an amount equal to the amount by which chapter 34 benefits for the program pursued would have exceeded the assistance actually received under chapter 32 for that program.

Cost: According to CBO, the enactment of section 308 would entail no significant cost.

Limitations on Changes of Programs of Education

Section 308 of the Committee bill is derived from section 319 of S. 13 as reported by the Committee on September 13, 1989, without substantive change (except for the deferral of the effective date by one year in light of the fact that the anticipated date of enactment is now one year later).

The background, description, and explanation of this provision are set forth in the Committee's report accompanying S. 13 (S. Rept. No. 101-126, pages 249-52).

TITLE IV—HOUSING

Permanent Extension of Financial Information and Counseling Assistance for Certain Veterans With Guaranteed Loans

Section 401 of the Committee bill, which is derived from section 403 of S. 2100 as introduced, would make permanent the requirement for VA to notify and counsel veterans about the impact of, and alternatives to, foreclosure when the veterans default on a VA-guaranteed home loan.

Background

The Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Public Law 100-198) amended what is now section 1832 of title 38 to require VA to provide certain notices and counseling to veterans who default on VA-guaranteed home loans, unless the lender provided equivalent services. The provision took effect on March 1, 1988, and will expire on March 1, 1991. It requires VA to provide, as appropriate in light of the veteran's particular circumstances, information and counseling about (a) methods of curing the default; (b) conveyance to VA by a deed in lieu of foreclosure; (c) other alternatives to foreclosure; and (d) the liabilities of VA and the veteran in the event of foreclosure.

At the Committee's May 11, 1990, hearing, this provision received general support from the veterans service organizations and

VA. The provision contained in the Committee bill is identical in effect to section 8(a) of the Administration-requested VA housing bill, S. 2484.

Committee bill

The Committee bill would make permanent the requirement for VA to notify and counsel veterans about the impact of, and alternatives to, foreclosure when the veteran defaults on a VA-guaranteed home loan.

The three-year limit was meant to provide a trial period during which Congress could evaluate the effectiveness of the provision in lowering foreclosures on VA-guaranteed home loans. A recent report by the General Accounting Office, entitled "Housing Programs: Increased Use of Alternatives to Foreclosure Could Reduce VA's Losses" (GAO/RCED-90-4 (December 1989)), stated that this provision "is a step toward improving the program and reducing dollar losses." The report covered a period immediately preceding and following enactment of the provision, and its findings and recommendations are consistent with the policy embodied in the provision—that financial information and counseling assistance to defaulting veterans can produce savings for VA that can exceed the costs of providing that assistance.

The Committee urges VA to increase this kind of assistance as both a helpful service to veterans and a cost-effective means of reducing loan-guaranty program costs to the government.

Cost: CBO estimates that enactment of section 401 would entail no significant costs.

Sale of Vendee Loans

Section 402 of the Committee bill, which is derived from section 305(a)(1) of the Veterans' Benefits Amendments of 1989 (Public Law 101-237), would allow VA to sell vendee loan assets either (a) with recourse, or (b) without recourse only if the amount received by VA is at least equal to the unpaid balance of the loan.

Background

When VA sells homes it has acquired as a result of foreclosure on a VA-guaranteed home loan, VA itself often finances the sale by extending credit, referred to as a "vendee" loan, to the purchaser. Vendee loans carry favorable interest rates and terms and thereby help VA to market its acquired properties. These vendee loans, as a form of commercial paper, are themselves marketable assets.

VA has sold vendee loans either with or without recourse. The purchaser of a loan sold with recourse may rely on VA to replace any loans that go into default with "good" loans of equal value. The purchaser, in other words, has "recourse" against VA for losses the purchaser otherwise would incur as a result of defaults in the loans it has purchased.

Section 305(a)(1) of Public Law 191-237 effectively would have prohibited without-recourse sales but never took effect because its effective-date provision required prior enactment of section 5003 of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-

239), which the President did not sign until after he signed Public Law 101-237.

This triggering mechanism for section 305(a)(1) was necessary because, prior to the enactment of Public Law 101-237, the Office of Management and Budget and the Congressional Budget Office did not recognize, for budget scorekeeping purposes, the proceeds of a recourse sale of loan assets as offsetting collections of the revolving fund into which the proceeds were deposited. The two agencies did recognize the proceeds of a nonrecourse sale as offsetting collections. This different treatment provided an artificial incentive for the use of nonrecourse sales to convert loan assets into cash. Under these scorekeeping rules, legislation to reverse the artificial incentive would have been charged with creating artificial budget "costs" that would have made the measure fiscally prohibitive.

For these reasons, both laws contained identical provisions to remove the scorekeeping bias by requiring that all proceeds received from vendee-loan sales--without regard to whether the sale is with or without recourse—be counted as offsetting collections in the fiscal year in which they are received.

However, the provision in Public Law 101-237 that would have reformed the way VA conducts its asset sales, could take effect only if the scorekeeping provisions were enacted first. It was not, so the reform provision did not go into effect.

The explanatory statement that the Chairmen of the Veterans' Affairs Committees in both Houses inserted in the *Congressional Record* during the debates on final passage of the Veterans' Benefits Amendments of 1989 described the triggering mechanism and its derivation. See the *Congressional Record* for November 20, 1989, pages H 9113-14 and S 16468.

Committee bill

The Committee bill would allow VA to sell vendee loan assets either (a) with recourse or (b) without recourse only if the amount received by VA is at least equal to the unpaid balance of the loan.

As noted above, the provision is identical to section 305(a)(1) of Public Law 101-237, which never took effect. The report accompanying the legislation that Congress eventually enacted in Public Law 101-237 (S. Rept. No. 101-126, pages 267-71) explains the rationale underlying this provision.

Cost: CBO estimates that enactment of section 402 would entail no significant costs.

Extension of Lender Review of Appraisals

Section 403 of the Committee bill, which is derived from section 5 of S. 2484, would extend for two years (through FY 1992) the authority for certain lenders to review appraisals.

Background

Public law 100-198, enacted December 21, 1987, amended section 1831(f) to provide VA with authority to permit lenders, under certain conditions, to review appraisals. This authority expires October 1, 1990. Proposed regulations to implement this authority were published May 11, 1989, the final regulations became effective in late June 1990.

Committee bill

The Committee bill would extend the expiration date for authority for lender review of appraisals to October 1, 1992. An extension of the authority is necessary to provide enough time for a fair test of the effect of the authority. The Committee notes VA's assurances that VA is aware of appraisal abuses in other federally insured lending and banking programs and expects VA to carefully monitor the implementation of the trial program to prevent abuses within the VA home loan guaranty program.

The bill as introduced would have extended the authority one year.

Cost: CBO estimates that enactment of section 403 would entail no significant costs.

Default Procedures and Property Management

Section 404 of the Committee bill, which is derived from section 8(b)(2) of S. 2484, would make permanent the no-bid formula in section 1832(c) of title 38 and the vendee-loan and property-management provisions in section 1833(a) of title 38.

Background

Section 1832(c) of title 38 requires VA to calculate, in accordance with the statutory formula specified in section 1832(c), the "net value" of a property securing a VA-guaranteed loan subject to foreclosure. This calculation is used to determine whether it is more cost effective for VA to acquire the property at foreclosure or to pay the guaranty amount to the lender. The requirement for a VA net-value determination expires October 1, 1991.

Section 1833(a) regulates the management and sale of properties acquired by VA as the result of default and foreclosure of home loans guaranteed by VA. The section regulates the percentage of VA-acquired homes which VA may sell for credit (a so-called "vendee loan"), places restrictions on the sale to investors of vendee loans without recourse to the government, and establishes criteria for the vendee loans VA makes to finance the homes it sells. This section expires December 31, 1990.

Committee bill

The Committee bill would eliminate the expiration dates for both subsections and make these provisions permanent.

Cost: CBO estimates that enactment of section 404 would entail no significant costs.

Exemption From Lobbying Reporting Requirements

Section 405 of the Committee bill, which is derived from section 12 of S. 2484, would exempt individuals obtaining VA-guaranteed loans from the requirement that individuals obtaining federally guaranteed loans of over $150,000 disclosure their lobbying activities.

Background

Public Law 101-121 requires certain disclosures of lobbying activities by certain recipients of government assistance. This law applies to loans over $150,000 made, insured, or guaranteed by the government. The conference report for Public Law 101-121 (H. Rept. 101-264) stated that the $150,000 threshold "serves to exempt * * * individuals who seek federally insured loans (for purchase of personal residences, for example) from these provisions." VA guaranteed loans effectively are limited to four times the guaranty amount. In section 306 of Public Law 101-237, Congress increased the maximum VA guaranty amount to $46,000. This guaranty would support a VA-guaranteed home loan of up to $184,000.

Committee bill

Section 405 of the Committee bill would exempt individuals obtaining VA-guaranteed loans from the requirement that individuals obtaining federally guaranteed loans of over $150,000 disclosure their lobbying activities.

The Committee supports the concept behind the lobbying restrictions and disclosures mandated by Public Law 101-121. The Congress recognized, however, that the purchase of a single-family home with a federally guaranteed loan has not been the subject of the type of abuse that led to the enactment of that statute. Section 405 is intended to continue the exemption from reporting requirements that now applies generally to single-family-home loans guaranteed by the government, in light of the higher limit on VA-guaranteed loans.

Cost: CBO estimates that enactment of section 405 would entail no significant costs.

Certificates of Veteran Status for National Housing Act Benefits

Section 406 of the Committee bill, which is derived from section 11 of S. 2484, would require VA, at the request of the HUD Secretary and without charge, to issue certificates of veteran status to veterans seeking certain benefits under laws administered by HUD.

Background

The National Housing Act (12 U.S.C. 1701 et seq.) provides for lower downpayments by veterans using certain HUD-administered housing programs. Pursuant to a 1966 agreement between VA and HUD, VA issues certificates establishing veteran status for purposes of this benefit. The agreement calls for HUD to reimburse VA for this service. In recent years, VA has issued the certificates even though HUD has declined to provide reimbursement.

Committee bill

Section 406 of the Committee bill would authorize VA to issue the certificates of veteran status for this program without reimbursement. VA states it can perform this function within current staffing levels and the Committee believes that issuing the certificates is a logical extension of VA's mission to aid veterans.

Cost: CBO estimates that enactment of section 406 would entail no significant costs.

Waiver of Indebtedness

Section 407 of the Committee bill is derived without substantive change from section 408 of S. 13 as reported by the Committee on September 13, 1989 (S. Rept. No. 101-126).

The background, description, and explanation of section 408 of S. 13 is set forth in the report accompanying S. 13 (*id.*, pages 281-82).

TITLE V—INSURANCE

Supplemental Service Disabled Veterans' Insurance for Totally Disabled Veterans

Section 501 of the Committee bill, which is derived from section 301 of S. 2100 as introduced, would increase from $10,000 to $20,000 the maximum amount of Service Disabled Veterans' Insurance (SDVI) available to those veterans who are eligible for a waiver of premiums due to total and permanent disability.

Background

SDVI is designed to provide life insurance protection to service-connected-disabled veterans. Under section 722 of title 38, a veteran with a service-connected disability rated at 10 percent or more and who is released from active duty on or after April 25, 1951, and is otherwise insurable under health standards established by the Secretary is eligible for SDVI. This insurance is issued in incremental amounts of $1,000 up to a total of $10,000 and generally must be applied for within one year after the date of VA's determination of service connection. Premiums are waived for those who are under 65 years of age and have service-connected disabilities that are rated totally disabling and have been so rated continuously for at least 6 months.

As of December 31, 1989, approximately 40,000 of the 173,000 SDVI policyholders were eligible for the waiver of premiums due to total disability. For those veterans, purchasing additional life insurance coverage on the commercial market is prohibitively expensive, if not impossible to obtain. This provision would allow those totally disabled veterans, and future veterans in the same situation, the option of purchasing up to an additional $10,000 in life insurance coverage. Premiums for the additional coverage would not be waived, but would be charged at the standard SDVI premium level.

At the Committee's May 18 hearing VA acknowledged the need for an SDVI increase and expressed its support for this provision, as did the veterans service organizations.

Committee bill

Section 501 of the Committee bill would increase the maximum amount of SDVI life insurance available to eligible veterans for the first time since 1951, when the legislation creating the program was enacted. For many veterans with service-connected disabilities rated as totally disabling, SDVI represents an irreplaceable source of insurance coverage. Thus, the Committee believes that this provision, by making optional additional life insurance coverage available to veterans with severe service-connected disabilities, would provide needed financial security to these veterans.

Section 501 includes a modification, suggested by VA, from the provision as introduced. This change would make clear that a veteran who is currently not entitled to a waiver of premiums based on a total disability (and thus would not be eligible to purchase the supplemental coverage) would have one year from the date of notification by VA that he or she has become entitled to a waiver in which to apply for the supplemental coverage.

Cost: CBO estimates that enactment of section 501 would entail costs of $1 million in both budget authority and outlays in FY 1991, and total costs of $5 million in both budget authority and outlays in FYs 1991-1995.

Increase in Amount of Veterans' Mortgage Life Insurance

Section 502 of the Committee bill, which is derived from section 302 of S. 2100 as introduced, would increase from $40,000 to $90,000 the maximum amount of Veterans' Mortgage Life Insurance (VMLI) available under section 806 of title 38 to veterans who have received a specially-adapted housing grant under chapter 21 of title 38. Those grants are available to veterans with certain severe service-connected disabilities rated permanently and totally disabling.

Background

The VMLI program is designed to provide financial protection to cover an eligible veteran's outstanding home mortgage in the event of his or her death. The insurance is written and administered directly by VA and veterans may purchase coverage in $1,000 increments to cover the outstanding mortgages on their homes up to $40,000. The program is restricted to only those veterans who are eligible for and have received grants for the purchase of a specially-adapted home or for the purchase of special adaptations that are reasonably necessary because of the veteran's disability. Grants for the purchase of specially-adapted housing are available to veterans with certain severe service-connected mobility impairments, and grants for the purchase of special adaptations are available to veterans who are blind or have lost the use of both hands. Grants of both types are limited to veterans whose disabilities are total and permanent. Veterans with VMLI coverage pay standard premiums that do not take their disabilities into account. Consequently, additional funds are required to cover the extra mortality costs of this group. The premiums collected account for approximately 25 percent of the claims costs, requiring an annual subsidy from Congress to cover the remaining 75 percent. (According to VA, the VMLI program currently requires an annual subsidy of approximately $4 million.) Proceeds from a VMLI policy are paid directly to the institution which holds the mortgage.

VA expressed its strong support for this provision at the Committee's May 18 hearing, as did veterans service organizations.

Committee bill

Section 502 of the Committee bill would increase the maximum amount of VMLI coverage available to eligible veterans for the first time since 1976, when the maximum coverage was increased from $30,000 to $40,000. According to the Department of Commerce, housing costs have risen 188 percent since the last increase. In the past 10 years, according to VA, over 60 percent of those who were issued VMLI coverage had mortgages in excess of $40,000. Thus, the current maximum amount of coverage available under a VMLI policy is insufficient to cover the outstanding mortgages on many catastrophically-disabled veterans' homes. Severely disabled veterans may not have the option of purchasing extra life insurance coverage from commercial insurers at affordable premiums.

The Committee believes that an increase in the maximum amount of VMLI available to qualified veterans is necessary, and would help provide a fully-deserved measure of security to our Nation's most severely disabled service-connected veterans and their families.

Cost: CBO estimates that enactment of section 502 would entail costs of $2 million in both budget authority and outlays in FY 1991, and total costs of $10 million in both budget authority and outlays in FYs 1991-1995.

TITLE VI—MINORITY AFFAIRS

Sections 601 and 602 of the Committee bill are derived from sections 601 and 602 of S. 13 as reported by the Committee on September 13, 1989 (S. Rept. No. 101-126), without substantive change (except for the deferral of certain dates in light of the fact that the anticipated date of enactment is now one year later).

The background, descriptions, and explanations of these provisions are set forth in the Committee's report accompanying S. 13 (*id.*, pages 285-90).

TITLE VII—MISCELLANEOUS

Eligibility of Veterans' Children for Interment in National Cemeteries

Section 701(a) of the Committee bill, which is derived from the Administration-requested S. 2482, would clarify that the term "minor child" as used in section 1002(5) of title 38, which specifies the persons who are eligible for burial in a national cemetery, covers children of persons eligible for burial in a national cemetery if the children die while either under age 21 or under age 23 and attending approved educational institutions.

Background

VA, in its April 13, 1990, letter transmitting the proposed legislation that was introduced as S. 2482, stated the need for this clarification as follows:

> Among those authorized interment under [section 1002 of title 38] are the minor children of veterans and certain others eligible for national cemetery burial. The term

"minor child" is not further defined in a statute, a situation we seek to remedy.

When Congress enacted the National Cemeteries Act of 1973, transferring from the Department of the Army to VA the responsibility for operating national cemeteries, it reenacted without change the prior title 24 provisions regarding eligibility. The Department of Army, in exercising its authority, had interpreted title 24's "minor child" provision as including children under age 21. Because Congress indicated an intent that similar eligibility rules should apply under VA's stewardship of the cemetery system, this Department employs in its regulation (38 C.F.R. section 1.620(g)) that same definition as had Army, with one exception. Our regulation permits recognizing as minor children others under age 23 while they are attending approved educational institutions, in keeping with the general definition of "child" for title 38 purposes.

We request that this definition be codified in order to avoid confusion. The title 38 definition of "child" (38 U.S.C. section 101(4)) is in one significant respect more restrictive than our definition of "minor child" for purposes of burial eligibility. Under section 101(4) an individual is generally not considered a "child" after reaching age 18 unless, as indicated above, pursuing an education (in which case age 23 is the upper limit). We do not believe Congress intended to so limit burial eligibility.

Committee bill

The Committee believes that the Department's reasons for requesting this legislation are sensible and that burial eligibility should be extended to burial-eligible persons' children who are under age 23 and pursuing an education. The Committee recognizes that this provision would make children who are between 18 and 21 years of age and not pursuing an education eligible for burial although such children would not meet the definition of "child" as set forth in title 38, and believes this would be acceptable policy in light of the history (and current policy) of extending eligibility to children under age 21. The Committee notes the full effect of this provision would be to change current law, which limits eligibility of those children under age 21, so as to make eligible children under age 23 who are pursuing an education.

Cost: CBO estimates that enactment of section 701(a) would entail no significant costs.

Use of Flat Grave Markers at the Florida National Cemetery

Section 701(b) of the Commitee bill, which is derived from the Administration-requested S. 2482, would authorize VA to provide for flat grave markers in one section of the Florida National Cemetery that had been designed and developed to use such flat grave markers prior to the enactment of the provision in current law requiring upright headstones in national cemeteries.

Background

VA, in its April 13, 1990, letter transmitting the proposed legislation introduced as S. 2482, indicated that in developing the Florida National Cemetery it had pre-placed graveliners in one section of the cemetery in order to realize cost-savings on subsequent burials. However, the graveliners were placed to accommodate flat grave markers, which are smaller than upright markers. Thus, although section 1004(c)(2) of title 38 requires the use of upright grave markers at the cemetery, they cannot be used in the section in which the graveliners were placed unless VA undertakes the costly removal and replacement of the graveliners.

Committee bill

The Committee believes that VA should be granted the authority to use flat grave markers in one section of the Florida National Cemetery, as requested, in order to avoid the cost of replacing the existing graveliners. Thus, section 701(b) of the Committee bill would provide VA the authority to use flat grave markers in the area of the cemetery in which the graveliners were pre-placed. The Committee notes that VA has advised that veterans would be offered the option of burials in that section of the cemetery or in the remaining sections of the cemetery where upright markers would be continued to be used. Thus, no veteran's grave would be marked with a flat marker without his or her (or his or her family's) agreement.

Cost: CBO estimates that enactment of section 701(b) would entail no significant costs.

Clarification of Prohibition on Payment of Attorneys' Fees

Section 702 of the Committee bill, which is identical to the text of S. 2615, would amend section 3404 of title 38 to clarify that the prohibition against the payment of attorneys' fees for representation in a proceeding before VA relating to VA benefits does not apply in the case of a veteran or other person who is confronted with an administrative debt-collection proceeding brought by VA or in other situations in which no claim for benefits is involved—such as constitutional challenges to VA regulations and Freedom of Information Act cases. (The fee limitations in section 3404 and the criminal penalties in section 3405 apply to fees for attorneys and agents. In this discussion, reference is made only to attorneys, with the understanding that in all cases the same statutory rules apply also to agents.)

Background

Under the current provisions of sections 3404 and 3405 of title 38, VA treats—and since 1986 under the predecessor provisions has treated—a person facing a debt collection the same as a person initiating a benefits claim proceeding with respect to the attorneys' fee limitations in those sections. These limitations, which were revised by section 104(a) of the Veterans' Judicial Review Act (Public Law 100-687), provide that in a proceeding before VA with respect to VA benefits a fee may not be paid to an attorney for services rendered before the "first, final" decision of the Board of Veterans'

Appeals (BVA), the final adjudicatory body in VA's claims adjudication system. Criminal sanctions are provided for attorneys who solicit or receive fees in violation of the prohibition. These limitations are construed by VA to prohibit a person in any administrative proceeding before the agency from retaining an attorney until after the first, final decision of the BVA. VA's position was first set forth in a General Counsel opinion issued May 5, 1986, and was upheld in a November 14, 1989, decision by the United States District Court for the Eastern District of Virginia in the case of *Bahnmiller* v. *Derwinski,* 724 F. Supp. 1208.

When that lawsuit was filed in June 1988, the attorney-fee provisions of sections 3404 and 3405 barred an attorney from receiving more than $10 for representation in a VA benefit case. This longstanding fee limitation was originally enacted in 1862 in an effort to protect Civil War veterans from lawyers gaining large percentages of benefits awards. The suit challenged VA's application of the limitation to situations in which the agency sought to recover a debt administratively.

Public Law 100-687 amended the fee statutes by permitting a veteran to pay reasonable fees for legal representation before VA in a claim for benefits after a first, final decision by the BVA—that is, in proceedings, after a BVA denial of an appeal. Such cases could involve reconsideration of the denial or a reopening based on the submission of new and material evidence. Both the old and new versions of the fee-limiting statutes are currently in effect, depending on the date of a filing of a Notice of Disagreement with a VA benefits decision, which is the first step in taking an appeal to the BVA. The new fee provisions apply only with respect to services rendered in a case in which a Notice of Disagreement is filed on or after the November 18, 1988, enactment of the Veterans Judicial Review Act. The $10 limitation is still in effect in all other situations.

The court in *Bahnmiller* upheld VA's position regarding its application of both the old and new attorney-fee provisions of sections 3404 and 3405 in holding that both the old and new fee statutes apply to debt-collection proceedings up to the point at which the BVA denies an appeal. Following the release of the court's opinion, VA's General Counsel on December 12, 1989, issued a clarifying memorandum which cited *Bahnmiller* and reconfirmed VA's interpretation that the attorney's fees restrictions applied in debt-collection proceedings under both the old and new law.

According to information provided by VA, as of March 31, 1990, the number of pending debt collection cases was 746,674, and the dollar amount associated with these cases was $3,347,503,000. In FY 1989, a total of 241,526 debt collection actions with an associated dollar value of $1,009,863,000 were initiated by VA. In FY 1988, 205,341 cases were initiated to recover alleged debts totaling $770,108,000. These figures reflect the vast number of individuals who are presently involved in debt collection proceedings under the attorney-fee restrictions in both current and prior law.

The Committee believes that a distinction should be drawn between situations in which a veteran, as the initiating party, seeks VA benefits and situations in which VA initiates an administrative action to recover an alleged debt to VA. The Committee notes that for several years, from 1974 to 1986, VA itself made such a distinction under the old law. Through its Adjudication Procedures Manual, VA specifically exempted debt collection and benefits forfeiture proceedings from the attorney-fee restrictions—a position VA abandoned on May 5, 1986, when the General Counsel opinion concluded that all VA administrative proceedings would be subject to the fee statutes.

VA and the Congress have historically attempted to keep the VA claims process as non-adversarial as possible. When a veteran makes a claim for benefits, section 3.103(a) of title 38, *Code of Federal Regulations,* requires VA personnel to provide assistance in the preparation and prosecution of the claim and requires VA to give the veteran the benefit of the doubt in deciding the claim. Also, the historical justifications for the attorney-fee limitations have included protection of the non-adversarial nature of the VA claims process, as well as protecting veterans from being preyed upon by attorneys.

The changes in the attorney-fee provisions made by Public Law 100-687 in 1988 were premised on the recognition that veterans, as a class, were not so unable to protect themselves from unscrupulous attorneys that a permanent barrier needed to be maintained in law between them and attorneys, and also on the recognition that the non-adversarial nature of the claims process would be best served by limiting attorney involvement at the early stages of the claims process. The Committee believes that the provisions of that law serve to promote the interests both of veteran claimants and the maintenance of the non-adversarial adjudication process for benefit claim.

It is the view of the Committee, however, that, in cases in which VA seeks to recover an alleged debt from a veteran or other person, the very nature of the proceeding is different from those in which a person affirmatively seeks a benefit from VA and that, because in a debt-collection proceeding VA and the alleged debtor are from the outset placed in adversarial roles, the interest in maintaining the non-adversarial nature of the system is not at issue.

The Committee notes, as evidence of the fundamentally different nature of debt collection proceedings, the fact that the Department in such proceedings commits itself by regulation to take "aggressive action" in collecting the outstanding debt (38 C.F.R. 1.910). The standard practice in such cases is for VA to issue demand letters to the alleged debtor, citing the possible adverse consequences (including reporting the existence of the debt to a consumer reporting agency which would affect the person's ability to obtain credit and, if necessary, referring the debt to the Internal Revenue Service for collection) if the debt is not paid or settled.

At a House Committee on Veterans' Affairs Subcommittee on Housing and Memorial Affairs hearing on April 26, 1990, VA's Chief Benefits Director, D'Wayne Gray, in response to a question as to whether a debt-collection activity was an adversarial process, expressed his view that debt-collection activities generally put the parties in an adversarial relationship.

At the Committee's May 18 hearing at which S. 2615 was considered, Bruce S. Deming, a lawyer active in the representation of veterans facing VA debt-collection actions, testified as to the situation under current law and the need for legislation to address the inequity. He stated:

> As a result of the current DVA policy, veterans and their families are denied the ability to obtain competent legal representation, and hence learn of their legal rights and responsibilities. Thus, when suddenly faced with the full weight, authority, and resources of the United States Government focused against them, they must "go it alone." This not only prejudices the rights of these veterans to a full and fair adjudication of their liability for these alleged "debts," but also causes emotional trauma to veterans and their families.
>
> Frequent letters from the Federal Government threatening everything from destruction of the veteran's credit rating, to referral to the IRS and the Justice Department, cause fear, uncertainty, embarrassment, and utter humiliation to the veteran affected. I have witnessed these effects, and they are often devastating. Significantly, these effects are made worse where, as the direct result of DVA policy, the veteran has no one to turn to for legal advise and guidance.
>
> Mr. Chairman, the passage of S. 2615 will make a tremendous difference for these affected veterans and their families. By allowing veterans the right to hire defense counsel (if they choose), Congress will ensure that these veterans have a full and fair opportunity to protect their substantive and procedural rights under law.

All but one of the veterans service organizations expressed support for S. 2615 at the May 18 hearing as well.

The Committee notes that the American Bar Association's Section of Administrative Law and Regulatory Practice approved at its August 1989 Annual Meeting a resolution, adopted by the ABA House of Delegates that same month, which recommended that VA "administer its debt collection and forfeiture proceedings in a manner that allows veterans to hire attorneys without regard to the attorney fee limitations set forth in 38 U.S.C. sections 2404 and 2405 that are applicable to benefit claims actions." This resolution was accompanied by a brief report which outlines the historical and legislative background of the past and current attorney-fee provisions in title 38 and the adverse effects of the application of the current provisions in debt-collection cases. The ABA resolution and report are as follows:

AMERICAN BAR ASSOCIATION

SECTION OF ADMINISTRATIVE LAW AND REGULATORY PRACTICE

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association urges the United States Department of Veterans' Affairs (herafter "DVA") to administer its debt collection and forfeiture proceedings in a manner that allows veterans to hire attorneys without regard to the attorney fee limitations set forth in 38 U.S.C. §§ 3404 and 3405 that are applicable to benefit claims cases. In furtherance of this resolution, the American Bar Association:

1) Urges the DVA to issue a public statement to the effect (1) that the attorneys' fee provisions of 38 U.S.C. §§ 3404 and 3405 do not apply in administrative proceedings respecting debt collection or forfeiture, and (2) that previous pronouncements to the contrary are superseded.

2) Urges the DVA to provide notice to all veterans who become subject to debt collections or forfeiture proceedings that they are entitled to hire an attorney or nonlawyer representative of their own choosing to represent them before the agency, and that the attorneys' fee limitations of 38 U.S.C. §§ 3404 and 3405 do not apply in such proceedings. Such notice shall be provided immediately upon commencement of such proceedings against the veteran; and

3) Urges Congress to enact legislation clarifying that the attorneys' fee limitations set forth in 38 U.S.C. §§ 3404, 3405 do not apply in administrative debt collection or forfeiture proceedings initiated against veterans by the DVA.

REPORT

The U.S. Department of Veterans' Affairs ("DVA") operates the largest public assistance program in the United States, dispensing benefits to veterans and their families in the form of disability compensation, educational benefits, home loan guarantees, health care and other services. Periodically, the DVA determines that a veteran has been "overpaid," or has otherwise incurred indebtedness to the U.S. Government in connection with receipt of benefits. When the DVA determines that a debt is allegedly owed to it by a veteran, it initiates collection action through administrative, and if necessary, through judicial proceedings.[1]

Veterans charged with owing money to the DVA are entitled to dispute the existence of the debt before the DVA. They are also entitled to contend that in any event collection would be against equity and good conscience, and that repayment should be waived. 38 C.F.R. §§ 1.911a, 1.955, 1.962, 1.963, 1.964 (1987). The veteran's contentions are initially adjudicated before a DVA Regional Office Committee on Waivers and Compromises. If the veteran's arguments are rejected at the DVA Regional Office level, they are entitled to appeal the matter to the Board of Veterans Appeals ("BVA").

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[1] Similarly, if the DVA determines that a veteran has engaged in the perpetration of a fraud against the DVA for the purpose of receiving DVA benefits, it will commence "forfeiture" of benefits proceedings against the veteran pursuant to 38 U.S.C. § 3503, 38 C.F.R. § 3.900 et seq. In such cases, the veteran is notified of the DVA's findings, and is given an opportunity to present a defense, including the right to submit evidence and to have a hearing.

Once the DVA determines that a debt is allegedly owed to it, and before the veteran has exhausted his or her appellate rights before the agency, a full range of administrative sanctions may be used against the veteran. These activities include reporting the alleged debt to consumer reporting agencies, referral to the Internal Revenue Service for diversion of the veteran's income tax refund, garnishing the veteran's wages if he or she is a federal employee, offsetting existing benefits the veteran may be receiving, or referring the case to the U.S. Department of Justice for prosecution in the name of the United States.

As of September 1988, there were over 470,000 outstanding debt collection proceedings pending against veterans throughout the United States. The issues involved in these proceedings initiated by the DVA are often complex, and frequently involve matters of state law.[2] However, due to the DVA's erroneous interpretation of a civil war-era statute, veterans are denied the assistance of counsel in such proceedings, and counsel may be sanctioned with criminal penalties for accepting fees in such cases.

In 1862, Congress passed a law limiting to $5 the amount a veteran could pay an attorney to assist in applying for a pension.[3] The law was designed to prevent attorneys and "pension agents" from taking advantage of unwary veterans by charging excessive fees for relatively simple services, i.e., the filling out of simple claims forms. In the following years, Congress amended the original fee limit many times, and in 1936, enacted the "$10 limit" which remained on the books until 1988. Codified at 38 U.S.C. § 3404, the limit provided, in relevant part, that attorneys' fees in "allowed claims for monetary benefits . . . . shall not exceed $10 with respect to any one claim." (emphasis added.) The attorneys' fee limit was accompanied by another statute establishing criminal sanctions in the form of fines and imprisonment for violation of the fee limitation. 38 U.S.C. § 3405.

For at least 12 years, from 1974 to 1986, the DVA properly recognized the obvious difference between a "claim" for benefits in the first instance, and an administrative debt collection proceeding initiated by the DVA. In its Adjudication Procedures Manual M21-1, which sets adjudication policy for all DVA offices nationwide, the DVA stated clearly that:

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[2] For example, a substantial number of debt collection proceedings initiated by the DVA involve home loan foreclosures, where state laws respecting notice and other foreclosure procedures are applicable.

[3] 12 Stat. 566, 568 (1862).

> The fee limitation is not applicable in a case in which an attorney is representing a claimant in defending charges of forfeiture of rights or proceedings regarding waiver of recovery of overpayment. The amount of such fee is not determined by the VA and payment is to be made by the claimant.[4]

This policy was consistent with the plain meaning of the fee statutes, as well as the extensive legislative history. It was also consistent with "unofficial" DVA General Counsel advisory opinions previously rendered with respect to individual claims cases.

Abruptly, on May 5, 1986, the DVA General Counsel issued a formal, binding precedent opinion in the form of a memorandum, stating that henceforth, the fee statutes would apply to all DVA administrative proceedings, including proceedings involving debt collection and forfeiture.[5] In the memo, the General Counsel reasoned that "consistent application" of the fee statues was appropriate, given that "both waiver and forfeiture proceedings are adjudicatory in nature, and are conducted in the same informal setting as other BVA benefits adjudications."

The DVA's reversal of policy is erroneous for several reasons. First, the plain language of the fee limiting statutes repeatedly referred to affirmative "claims" for benefits, not debt collection proceedings initiated by the DVA.[6] Second, the

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[4] VA Manual M21-1, § 3.12 (formally removed February 8, 1988) (emphasis added).

[5] Veterans' Administration Memorandum from General Counsel to Chief Benefits Director re: "Scope of Statutory Limitation on Attorneys' Fees in Claims Involving Benefits Administered by the Veterans' Administration, 38 U.S.C. §§ 3404(c), 3405" (May 5, 1986).

[6] As amended by the Veterans' Judicial Review Act, 38 U.S.C. § 3404(c) now imposes fee restrictions "in connection with a

[footnote continued next page]

extensive legislative history of these statutes confirms the result reached under the "plain language" test.7/

Third, 38 U.S.C. § 3405 establishes criminal sanctions for violation of the fee limits. It is well established that any ambiguity in a criminal statute must be construed against the governmental entity. United States v. Enmons, 410 U.S. 396, 93 S. Ct. 1007, 1015 (1973). Thus, even if the fee statutes were ambiguous on this issue, absent a specific statutory reference to debt collection and forfeiture proceedings, the DVA's interpretation must be rejected.

Finally, the DVA's interpretation of the fee statutes is prima facie unreasonable. To suggest, as the DVA does, that debt collection proceedings are essentially similar to affirmative claims proceeedings due to the fact that both involve the use of "informal" procedures is to ignore the obvious. Debt collection proceedings, by their very nature, are extremely adversarial. It is one thing to apply for education benefits, or a DVA guaranteed mortgage, and be denied. It is quite another to be subject to aggressive debt collection by the federal government, where one's credit may be ruined, reputation injured, wages garnished, etc.8/

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proceeding before the Veterans' Administration with respect to benefits under laws administered by the Veterans' Administration . . ." P.L. 100-687, Section 104. While the language of the fee statute as amended is arguably broader than the former version of the statute, which consistently referenced "claims for benefits," there is no indication in the legislative history of P.L. 100-687 that Congress affirmatively decided to broaden the coverage of the fee restrictions to include either debt collection proceedings or forfeiture proceedings.

7/ On June 30, 1987, the House Committee on Veterans' Affairs published a legislative history of the fee limitation prepared at the Committee's request by the non-partisan American Law Division of the Library of Congress. This exhaustive history analyzes approximately thirty statutes either amending or affecting the fee limitation, and quotes numerous passages of Congressional floor and committee debate. Nowhere in this impartial survey is there anything supporting the DVA's application of the fee limits to debt collection and forfeiture proceedings. See House Committee Print No. 8, 100th Cong., 1st Sess. (June 30, 1987).

8/ The validity of the DVA's statutory interpretation as reflected in the May 5, 1986 General Counsel opinion is currently

[footnote continued next page]

Recently, the $10 fee limitation was amended by the Veterans' Judicial Review Act, P.L. 100-687.[9] As amended, veterans are prohibited from paying any fees to an attorney until the BVA has rendered a "first, final decision." Only after that "first, final decision" has been rendered may a veteran pay an attorney "reasonable" fees for services rendered.[10] Thus, if the DVA persists in its current view that the fee limitations apply to debt collection and forfeiture proceedings, the practical effect is that before a veteran may hire an attorney in a debt collection or forfeiture proceeding, he or she must: (1) dispute the existence of the debt, or request a waiver before the DVA's Regional Office Committee; (2) lose the case before the Regional Office Committee; (3) appeal the case to the BVA; and (4) lose the appeal to the BVA. Only then is the veteran entitled to retain a lawyer in an attempt to reopen the case. Meanwhile, the veteran is exposed to the full range of administrative sanctions, and must attempt to negotiate often complex legal issues without the assistance of counsel.[11]

United States Veterans have sacrificed greatly to preserve the fundamental rights of all Americans to due process. If Congress had intended to deprive these veterans of the fundamental right to counsel when accused of owing money to the federal government, it would have said so. It did not. Finally, the fee statutes were enacted to protect veterans, not harm them. The DVA's current interpretation, however, is extremely harmful

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under federal court challenge (Eastern District of Virginia, Alexandria Division) in the matter of Bahnmiller et al. v. Turnage, Civil Action No. 88-732 A.

9/ P.L. 100-687 was formally enacted on November 18, 1988.

10/ We note that in 1977, the ABA adopted a resolution recommending that Congress repeal the $10 fee limit set forth at 38 U.S.C. § 3404(c). This resolution is fully consistent with the ABA's prior resolution.

11/ Of course, if the case is referred to the Justice Department for prosecution, and suit is filed against the veteran in the name of the United States, the fee restrictions do not apply. However, the vast majority of debt collection cases initiated by the DVA are in the administrative, rather than the judicial arena.

to veterans. Accordingly, we urge the adoption of the proposed resolution.

Respectfully submitted,

Sally Katzen
Chair, Section of Administrative Law
and Regulatory Practice

August, 1989

Committee bill

Section 702 of the Committee bill would, as to the new law, expressly authorize, prior to the "first, final" decision of the BVA, the payment of a fee to an attorney for services in situations in which VA, as the moving party, seeks to recover a debt related to VA benefits. It would also clarify that reasonable fees may be paid in cases in which no claim for benefits is involved, such as constitutional challenges to regulations and Freedom of Information Act cases. The provision would make the same policy clarification regarding the $10-fee limitation in the old law, which still applies to cases in which a Notice of Disagreement was filed before the November 18, 1988, enactment date of the Veterans' Judicial Review Act.

The Committee notes that actions under the Freedom of Information Act and constitutional challenges to VA regulations or actions would continue to be exempt from the restriction on attorney fees. On its face, current law does not restrict the hiring of attorneys in these actions because they are not proceedings before VA with respect to benefits.

The Committee believes section 702 of the Committee bill is necessary to fulfill the promise that Congress, in enacting the Veterans' Judicial Review Act, made to veterans and other persons who deal with VA that they will be afforded basic fairness in their dealings with, and meaningful review of administrative actions of, the Department. It would in no way alter the full force of the limitations and sanctions that exist under current law with regard to the hiring and paying of legal counsel in cases where a person affirmatively seeks a benefit from the Department. However, in the Committee's view, the complexity of debt proceedings and the potentially very serious impact of debt-collection cases require that a veteran or other person alleged to owe a debt to VA have full opportunity to retain competent legal representation.

Cost: CBO estimates that enactment of section 702 would entail no significant costs.

Modification of Administrative Reorganization Requirements

Section 703 of the Committee bill, which includes provisions derived in part from S. 2102, would (a) extend the deadline by which a proposed reorganization must be reported to Congress pursuant to section 210(b)(2) of title 38, to April 1 preceding the fiscal year in which the reorganization would be implemented; (b) exempt any administrative reorganization at a VA medical and regional office center (VAM&ROC) if there would be no reduction in the number of full-time equivalent employees (FTEE) at that center below the number of FTEE employed there the immediately preceding fiscal year; and (c) limit the Congressional "report-and-wait" requirements for certain VA administrative reorganizations under section 210(b)(2) to offices or facilities which have as their primary mission providing care or services to veterans.

Background

Historically, section 210 of title 38 provided statutory authority for VA to reorganize so that changes in mission or program could be efficiently implemented. In 1981 in Public Law 97-66, Congress amended section 210(b) in order to establish "report-and-wait" requirements for planned VA administrative reorganizations which involved a loss or transfer of functions away from a covered VA facility or office resulting in FTEE reductions that exceed specified levels. Under these restrictions, VA cannot implement a covered "administrative reorganization" in a given fiscal year unless a detailed plan and justification has been sent to the appropriate committees of Congress not later than the date on which the budget for that fiscal year is submitted to Congress.

Under current law (section 300 of the Congressional Budget Act of 1974), the President's budget for a fiscal year is due to be submitted on the first Monday after the January 3 preceding the beginning of that fiscal year.

Committee bill

The Committee bill would amend the report-and-wait restrictions in three ways to establish a better balance between the need for VA to change and adapt and the needs of oversight committees to have advance notice of significant VA reorganizations. First, it would shorten (by approximately two-and-a-half months) the waiting period presently required by making the reporting deadline under section 210(b)(2), April 1 preceding the fiscal year in which the reorganization would be implemented rather than the date on which the President transmits the budget for the fiscal year involved.

Second, the Committee bill would exempt any administrative reorganization involving the transfer of support functions and FTEE between the Veterans Benefits Administration (VBA) and Veterans Health Services and Research Administration (VHS&RA) components at a VAM&ROC if the same number of FTEE would continue to be employed at that VAM&ROC.

Third, the Committee bill would amend the section 210(b)(2)(D)(iii) definition of a "covered field office or facility" to make the "report-and-wait" restrictions applicable only at those offices or facilities which have as their primary mission providing care or services to veterans. Under this amendment, section 210(b)(2) would continue to apply to VA regional offices, medical centers, medical and regional office centers, insurance centers, free-standing outpatient clinics, and similar field offices or facilities. However, VA administration and support facilities, such as data-processing centers, finance centers, medical region management offices, supply depots, and record centers, would no longer be covered. The Committee believes that limiting section 210(b)(2) coverage to VA field offices or facilities that primarily provide direct care or services to veterans is consistent with the original intent underlying section 210(b)(2) because it was for the protection of such care and services that Congress enacted these restrictions.

Cost: According to CBO, the enactment of section 703 would entail no cost.

Enhanced-Use Leases and Special Disposition of Property

Section 704 of the Committee bill, which is derived from Amendment No. 2019 to S. 2100 (and which, in turn, was derived from Administration-requested legislation, S. 2532), would add to chapter 81 of title 38 a new subchapter V to establish a 4-year pilot program under which VA would be authorized, under certain circumstances, to enter into "enhanced-use" leases with respect to VA property and to provide for the special disposition of the leased property. Not counting child-care services projects, the number of leases would be limited to an overall total of 30 and not more than 10 in any one fiscal year.

Background

Under section 5022 of title 38, VA may lease its property to a third party for no more than 3 years. There are no provisions expressly enabling VA to enter into leasing arrangements as a means of obtaining services that would contribute to the ability of VA facilities to carry out their missions.

The Departments of Defense, in sections 2667 and 2809 of title 10, United States Code, and Interior, in section 20 *et seq.* of title 16, have legislative authority to enter into long-term leases and, within certain limits, to receive in-kind consideration. The Administration-requested S. 2532 sought to test the applicability of the enhanced-use lease concept, allowing VA to enter into extended leases on selected properties it owns and accept in-kind consideration (for example, construction, alteration, repair, remodeling, improvement, extension, maintenance, space, services, or other benefit to the VA) in lieu of or in combination with rental payments—to meet VA requirements for space or services that it would otherwise be unable to meet or unable to meet as cost effectively. Special disposition authority was also sought when the Secretary determines that property is no longer needed.

Amendment No. 2019 of S. 2100, embracing the Administration concept of enhanced-use leases and special disposition authority, added and strengthened various safeguards to protect the Federal interest.

At the Committee's June 14, 1990, hearing there was general opposition from the veterans service organizations to both S. 2532 and Amendment No. 2019 of S. 2100, with the exception of the American Legion that did not oppose either. The opposition focused on the special disposition authority and the concern for losses of VA property that might be needed later. After reconsideration of the disposal safeguards, the Vietnam Veterans of America wrote to Senator Cranston supporting Amendment No. 2019. The Paralyzed Veterans of America wrote to Senator Cranston agreeing to work toward an acceptable legislative solution, but still expressing concerns that enhanced-use leases would erode VA's ability to control the designated properties and potentially jeopardize the control VA has over quality assurance standards as they pertain to health-care services in leased facilities.

Committee bill

The Committee bill would establish, effective October 1, 1990, a 4-year "enhanced-use lease" pilot program under which VA could enter into extended leases of selected VA-owned properties and accept in-kind consideration in lieu of, or in combination with, cash. This would enable VA to acquire services without direct Federal capital expenditure. Any requirement in an enhanced-use lease for VA to make cash payments to the lessee would be required to be provided for in advance in an appropriation Act.

In selecting a VA-owned property for an enhanced-use lease, the Secretary of Veterans Affairs would be required to determine that the proposed lease would provide a cost-effective means of carrying out or providing appropriate space for an activity contributing to the VA mission and would be consistent with and not adversely affect that mission. Examples could include the development and operation, by the lessee, of parking facilities that would meet the needs of VA patients and their families as well as VA employees and child-care centers that would meet VA employee needs. The availability of such services could obviously make a significant contribution to the recruitment and retention of qualified personnel.

Before designating a property for an enhanced-use agreement, VA would be required to conduct a public hearing in the local community to receive the views of veterans service organizations, local commercial enterprises, and other interested parties regarding the proposed lease and the possible effects of the lease on local commerce and other aspects of the local community, or programs administered by the VA, and on services to veterans in the local community. Before conducting the public hearing, the Secretary would have to give veterans, residents, and businesses in the local community reasonable notice, including the time and place of the hearing, identification of the property proposed to be leased, a description of the proposed uses of the property, a description of the proposed lease, and a description of how the proposed lease will contribute to, be consistent with, and not adversely affect, the mission of the VA and will affect services to veterans. The Committee considers the public hearing requirement to be a major safeguard of the public interest.

If, following the conduct of a public hearing, the Secretary intends to designate the property for enhanced-use lease purposes, the Secretary must so notify the Congressional Committees on Veterans' Affairs and publish a notice of such intention in the Federal Register. The deadline for the notice is not less than 90 days before entering into the lease if notice is given in the first three months of a calendar year or not less than 180 days before entering into the lease if notice is given at any other time. (This is a change from the enhanced-use provision originally submitted in Amendment No. 2019 that would have required Congressional notification within 10 days after the designation of a property for an enhanced-use lease.) This notice must include identification of the property; and explanation of the background, rationale, and economic factors supporting the proposed lease; a summary of the views presented at the hearing; a general description of the proposed lease; and a description of how it would contribute cost-effectively to, be consistent, with and not adversely affect VA's mission and would affect services to veterans.

A second, updated notice containing a cost-benefit analysis, description of the proposed lease, and notice of designation would have to be provided to the Committees not less than 30 days before the lease is entered into.

At least 10 days before entering into the lease, VA would be required to provide the Committees with a copy of it.

In entering into enhanced-use leases VA would be required to follow competitive procedures prescribed, after consultation with the Administrator of General Services, by the Secretary. The term of the lease may not exceed 35 years in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, or 20 years otherwise. The VA's interest in any enhanced-use lease and in the leased property would not be subject, directly or indirectly, to any State or local laws relating to taxation, fees, assessments, or special assessments, except sales taxes associated with the construction, alteration, repair, remodeling, or improvement that might be carried out under this legislation.

A special disposition of the leased property to the lessee would be authorized if during the term of the lease or within 30 days after its expiration the Secretary determines that the leased property is not needed by VA. The Administrator of General Services would carry out any such disposition. Advance notice of a special disposition would be required to be provided to the Committees on Veterans' Affairs and published in the Federal Register not less than 90 days before it occurs.

Funds received by VA under the lease or from a special disposition of leased property would be deposited in the Nursing Home Revolving Fund.

Consistent with the purpose of section 421 of the Veterans' Benefits and Services Act of 1988 (Public Law 100-322), the Committee bill would generally preclude, without further legislation, the use of this extended lease authority with respect to certain VA properties in Southern California. Because of the high value placed on child-care services, the Committee added to that prohibition as originally set forth in Amendment No. 2019, an exception that an enhanced-use lease would not be considered a prohibited action if the property is used solely for child-care services to be provided for the benefit of employees of the VA or of an affiliated health-personnel educational institution and other individuals employed on the premises, with services predominantly benefiting VA employees and their children.

While, as noted above, the concept reflected in this section of the Committee bill has been utilized to some extent by other federal departments, its applicability to VA needs to be tested. The number of enhanced-use leases would, therefore, be limited to not more than 30 under the pilot program and not more than 10 in any fiscal year. Because of the importance of and need for child-care services, a lease entered into by the Secretary would not be considered an enhanced-use lease for the purposes of those limitations if the primary use made of the leased premises were the provision of child-care services for VA employees.

Cost: According to CBO, the enactment of Section 704 would entail no significant cost.

Court of Veterans Appeals

Section 705 of the Committee bill would amend section 4064 of title 38 so as to make applicable to the United States Court of Veterans Appeals the provisions of section 455 of title 28, United States Code, regarding the disqualification of Federal judges where a judge's "impartiality might reasonably be questioned" or, more specifically, where the judge has a personal bias, personal knowledge of disputed facts at issue, certain prior involvement in a case, or conflict of interest.

This provision would make clear that the standards relating to disqualification that are applicable to Federal judges would also be applicable to judges on the Court of Veterans Appeals. This change would help to ensure both the impartiality of judges on the Court and, importantly, the appearance of their impartiality. The Committee believes that veterans taking appeals to the Court should be confident that their cases will be given the same fair and impartial consideration by Court of Veterans Appeals judges that would be given in any another Federal court.

Cost: CBO estimates that enactment of section 705 would entail no significant costs.

Treatment of Department of Veterans Affairs' Medical Care Account Under Sequestration

Section 706 of the Committee bill, which is derived from section 401 of H.R. 4557 as passed by the House of Representatives and was proposed by Senator Cranston during the markup of S. 2100, would amend section 113 of title 38 to make all funds in VA's Medical Care account, including administrative expenses, exempt from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.; known as "Gramm-Rudman-Hollings").

Background

The Gramm-Rudman-Hollings law (GRH) specifies certain maximum federal deficit amounts for each fiscal year through FY 1993, for which the target is zero. If at the outset of a fiscal year the projected deficit as estimated by the Director of the Office of Management and Budget exceeds the applicable target by more than $10 billion, the President is required to reduce federal spending by the amount necessary to meet the deficit target. Half of the total reductions must be made in defense spending and the other half must be made in non-defense spending. To achieve the required reductions in non-defense programs, expenditures under each account (other than those exempt or subject to special rules) must be cut by a uniform percentage that would produce the savings that must be achieved in those accounts.

Many different accounts within the federal budget receive special treatment under this process, known as sequestration. Several VA benefits and accounts are fully exempt from the reductions, including the following programs for veterans with service-connected disabilities or the survivors of these veterans: disability compensation, dependency and indemnity compensation for survivors, specially adapted housing and mortgage-protection life insurance, burial benefits, rehabilitation services and assistance, educational assistance for dependents and survivors, and automobile and adaptive-equipment grants.

Also exempt are VA pensions for needy, non-service-connected-disabled or elderly wartime veterans and for the needy survivors of wartime veterans, VA-guaranteed home loans, and several life insurance accounts and revolving fund accounts. The Senate Budget Committee, in a March 1988 document entitled *The Congressional Budget Process: An Explanation* (S. Prt. No. 100-89), has compiled the following list of accounts that are exempt from the effects of, or partially protected from, sequestration:

SPECIAL RULES FOR TREATMENT OF PROGRAMS

(For additional explanation of special rules, see the conference report on Gramm-Rudman-Hollings, House Report 99-433, pp. 48-59, 85-95 and the conference report on the 1987 Reaffirmation Act, House Report 100-313)

Special Rules by Program

Social Security and Railroad Retirement Tier I

—Social security and railroad retirement tier I benefits and cost-of-living adjustments are exempt from reduction under Gramm-Rudman-Hollings.

—Social security revenues and outlays are excluded from the President's and Congress' budget totals. However, social security revenues and outlays are figured into the total budget figures for fiscal years 1986 through 1991 for purposes of calculating the deficits under Gramm-Rudman-Hollings.

Medicare

—Reductions in the medicare program are achieved through reductions in payments for covered services. No changes in co-insurance or deductibles are made, and covered services are unaffected under a presidential reduction order.

—Under a presidential reduction order, each payment made under the medicare program would be reduced by a maximum of 2 percent. If the excess deficit is small enough so that the uniform reduction is less than 2 percent, all non-exempt non-defense programs are reduced by that uniform percentage.

Community Health Centers; Migrant Health Centers; Indian Health Facilities; Indian Health Services; Veterans Medical Care

Reductions in these health programs are limited to 2 percent below the levels they would otherwise receive in any fiscal year.

Commodity Credit Corporation

—Payments and loan eligibility under any contract entered into after a presidential reduction order has been issued for a fiscal year are subject to a percentage reduction.

—Outlay reductions in the following year that are the result of contract adjustments in the reduction year are counted toward overall outlay reduction required in the reduction year.

—Appropriations for CCC net realized losses are not subject to reduction.

Guaranteed Student Loans

Two changes to the guaranteed student loan program are to occur automatically under a presidential reduction order. First, the special statutory allowance factor for lenders is to be reduced by 0.40 percent, but not below 3.00 percent, in the first year of the loan. Second, a student's origination fee is to increase by 0.50 percent. In both cases, the reduction is to affect only loans made during the applicable fiscal year *after* the order is issued.

Child Support Enforcement

Outlays for the child support enforcement program are available for reduction only by reducing the Federal matching rate for State administrative expenses.

Foster Care and Adoption Assistance Programs

The amounts available for reduction in the foster care and adoption assistance programs are limited to increases in foster care maintenance payment rates or adoption assistance payment rates and only to the extent that the reduction can be made by reducing Federal matching payments by a uniform percentage.

Unemployment Programs

Regular State unemployment benefits, the State share of extended unemployment benefits, benefits paid for former Federal employees and former members of the armed services, and loans and advances to the State and Federal unemployment accounts are *not* available for reduction. However, the Federal share of extended benefits and federally paid benefits and administrative expenses are fully available for reduction.

Mine Worker Disability

Increases in black lung benefits and special benefits for disabled coal miners are treated in the same manner as automatic spending increases.

Federal Pay

—Rates of pay for civilian employees (and rates of basic pay, basic subsistence allowances and basic quarters allowances for members of the uniformed services) may *not* be reduced by a presidential reduction order.

—A scheduled pay increase may *not* be reduced by a presidential reduction order.

Federal Administrative Expenses

—Administrative or operating expenses of all the departments and agencies, including self-financed programs, are subject to reduction, unless specifically exempted.

—Payments made to reimburse administrative costs incurred by State or local governments (such as for AFDC and Medicaid) are not considered Federal administrative expenses; however, State administrative costs for a program may be reduced to the extent the program is reduced.

Deferrals

Deferrals proposed between October 1 of a fiscal year and October 15 of such fiscal year are not to be taken into account in determining the budget base.

Automatic Spending Increases Subject to Reduction

Any automatic spending increases that would be first paid between October 1 and October 15 of an applicable fiscal year are suspended until October 15 of such fiscal year. If the October 15 presidential order provides for elimination of the increases, the suspended increases will be canceled. If the increases are only partially reduced, the suspended increases will be restored to the allowed amount and lump-sum reimbursements will be made, to the extent necessary.

Prior Legal Obligations Exempt From Sequestration

Gramm-Rudman-Hollings provides that obligated balances are *not* subject to reduction under a presidential reduction order.

Exempt Programs

(Except for administrative or operating expenses, the following programs are exempt from reduction under Gramm-Rudman-Hollings. Programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States, 1986—Appendix):

Social security benefits and tier I railroad retirement benefits.

Veterans' compensation (36-0153-0-1-701).

Veterans' pensions (36-0154-0-1-701).

National Service Life Insurance Fund (36-8132-0-7-701).

Service-Disabled Veterans Insurance Fund (36-4012-0-3-701).

Veterans Special Life Insurance Fund (36-8455-0-8-701).

Veterans Reopened Insurance Fund (36-4010-0-3-701).

United States Government Life Insurance Fund (36-8150-0-7-701).

Veterans Insurance and Indemnity (36-0120-0-1-701).

Special Therapeutic and Rehabilitation Activities Fund (36-4048-0-3-703).

Veterans' Canteen Service Revolving Fund (36-4014-0-3-705).

Benefits under chapter 21 of title 38, United States Code, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities (36-0137-0-1-702).

Benefits under section 907 of title 38, United States Code, relating to burial benefits for veterans who die as a result of service-connected disability (36-0155-0-1-701).

Benefits under chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces (36-0137-0-1-702).

Net interest.

Earned income tax credit.

Offsetting receipts and collections.

Aid to families with dependent children (75-0412-0-1-609).

Child nutrition (12-3539-0-1-605).

Commodity Supplemental Food Program (12-3512-0-1-605).

Food stamps (12-3505-0-1-605 and 12-3550-0-1-605).

Grants to States for medicaid (75-0512-0-1-551).

Supplemental security income (75-0406-0-1-609).

Women, infants, and children program (12-3510-0-1-605).

Activities resulting from private donations, bequests, or voluntary contributions to the Government.

Administration of Territories, Northern Mariana Islands Covenant grants (14-0412-0-1-806).

Thrift Savings Fund (26-8141-0-7-602).

Alaska Power Administration, operations and maintenance (89-0304-0-1-271).

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds).

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-271).

Bureau of Indian Affairs, miscellaneous payments to Indians (14-2303-0-1-452).

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14-9973-0-7-999).

Claims, defense (97-0102-0-1-051).

Claims, judgments, and relief acts (20-1895-0-1-806).

Coinage profit fund (20-5811-0-2-803).

Compensation of the President (11-0001-0-1-802).

Comptroller of the Currency.

Customs Service, miscellaneous permanent appropriations (20-9922-0-2-852).

Dual benefits payments account (60-0111-0-1-601).

Eastern Indian land claims settlement fund (14-2202-0-1-806).

Exchange stabilization fund (20-4444-0-3-155).

Federal Deposit Insurance Corporation.

Federal Home Loan Bank Board.

Federal Savings and Loan Insurance Corporation.

Federal payment to the railroad retirement account (60-0113-0-1-601).

Foreign military sales trust fund (11-8242-0-7-155).

Health professions graduate student loan insurance fund (health education assistance loan program) (75-4305-0-3-553).

Higher education facilities loans and insurance (91-0240-0-1-502).

Internal Revenue Collections for Puerto Rico (20-5737-0-2-852).

Intragovernmental funds, including those from which the outlays are derived primarily from resources paid in from other government accounts, except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect.

Medical facilities guarantee and loan fund, Federal interest subsidies for medical facilities (75-4430-0-3-551).

National Credit Union Administration, its central liquidity facility, and its credit union share insurance fund.

Panama Canal Commission, operating expenses (95-5190-0-2-403), and Panama Canal Commission, capital outlay (95-5190-0-2-403).

Payment of Vietnam and *USS Pueblo* prisoner-of-war claims (15-0104-0-1-153).

Payment to civil service retirement and disability fund (24-0200-0-1-805).

Payments to copyright owners (03-5175-0-2-376).

Payments to health care trust funds (75-0580-0-1-572).

Payments to military retirement fund (97-0040-0-1-054).

Compact of Free Association, economic assistance pursuant to Public Law 99-658 (14-0415-0-1-806).

Payments to social security trust funds (75-0404-0-1-571).

Payments to State and local government fiscal assistance trust fund (20-2111-0-1-851).

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153).

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds.

Payments to the United States territories, fiscal assistance (14-0418-0-1-852).

Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801).

Postal service fund (18-4020-0-3-372).

Salaries of Article III judges.

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705).

Southeastern Power Administration, operations and maintenance (89-0302-0-1-271).

Southwestern Power Administration, operations and maintenance (89-0303-0-1-271).

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999).

Washington Metropolitan Area Transit Authority, interest payments (40-0300-0-1-401).

Western Area Power Administration, construction, rehabilitation, operations, and maintenance (89-5068-0-2-271).

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271).

Black lung benefits (20-8144-0-7-601).

Central Intelligence Agency retirement and disability system fund (56-3400-0-1-054).

Civil service retirement and disability fund (24-8135-0-7-602).

Comptrollers general retirement system (05-0107-0-1-801).

Foreign service retirement and disability fund (19-8186-0-7-602).

Judicial survivors' annuities fund (10-8110-0-7-602).

Longshoremen's and harborworkers' compensation benefits (16-9971-0-7-601).

Military retirement fund (97-8097-0-7-602).

National Oceanic and Atmospheric Administration retirement (13-1450-0-1-306).

Pensions for former Presidents (47-0105-0-1-802).

Railroad retirement tier II (60-8011-0-7-601).

Retired pay, Coast Guard (69-0241-0-1-403).

Retirement pay and medical benefits for commissioned officers, Public Health Service (75-0379-0-1-551).

Special benefits, Federal Employees' Compensation Act (16-1521-0-1-600).

Special benefits for disabled coal miners (75-0409-0-1-601).

Tax Court judges survivors annuity fund (23-8115-0-7-602).

Currently, the VA Medical Care account is subject to a maximum sequestration of 2 percent of amounts attributable to direct patient-care costs, but Medical Care account funds needed for administrative costs are subject to the full, across-the-board cut (2 U.S.C. 906(b)(1) and (k)). Medicare also is subject to a 2-percent cap (2 U.S.C. 906(d)), but Medicaid is completely exempt, including the reimbursement of states for their administrative costs (2 U.S.C. 905(h) and 906(b)(3)).

In the last five years, the President has imposed two sequestrations. In FY 1986, the Medical Care account appropriation of $9.26 billion was reduced by $118 million under sequestration. The FY 1990 sequestration, which was 1.4 percent for non-defense accounts, reduced the $11.5 billion appropriation by $159 million.

On May 1, 1990, the House of Representatives passed H.R. 4557, containing a provision (section 401) to exempt the entire VA Medical Care account from sequestration. The provision was authored by the Chairman of the House Committee on Veterans' Affairs, Representative G.V. "Sonny" Montgomery, and had been approved unanimously by the House Committee on April 26, 1990.

At the Senate Committee's June 14 hearing on health-care issues, the veterans' service organizations very strongly supported and VA strongly opposed the House provision.

Committee bill

Section 706 of the Committee bill would make all funds in VA's Medical Care account (36-0160-0-1-703), including funding for administrative expenses, exempt from sequestration under GRH.

The Office of Managment and Budget currently estimates that, in the absence of spending cuts or revenue increases equaling $100 billion, sequestration for FY 1991 would have to reduce non-defense accounts by 38.4 percent. This projected sequestration would have catastrophic effects on VA health-care programs.

OMB has calculated the impact of this sequestration on the Medical Care account, assuming appropriations at the FY 1990 level (which takes into account the FY 1990 appropriation Act, the FY 1990 sequester, the FY 1990 supplemental appropriation, and certain inflation factors) of $11.9 billion. The OMB *Mid-Session Review of the Budget* (July 16, 1990) estimates that $911 million of the Medical Care account would be considered administrative expenses, subject to the full 38.4-percent cut—a $350-million reduction. The direct-care portion of the account, $11 billion, which is subject to the 2-percent cap, would be cut by $220 million. The total reduction in the Medical Care account would be $570 million.

Any reduction even approaching this amount inevitable would force VA to cut back sharply on its health-care services to veterans. VA's current medical-equipment backlog—currently almost half a billion dollars—would balloon to even-more-terrible proportions. Hundreds of thousands of veterans seeking VA care would not receive that care.

OMB itself has described, on page 35 of the *Mid-Session Review*, the impact that this magnitude of a sequestration would have:

> A sequester, compared with the 1991 request, would:

- Require significant reductions in purchase of medical and other supplies and equipment, prevent the opening of new facilities, cancel 1991 initiatives (e.g., increases for drug abuse treatment, quality assurance, physician and nurses pay), reduce medical care staff years by 15,600 or eight percent, and reduce the number of incidents of care (e.g., hospital stays and outpatient visits) provided to veterans by 2.0 million . . . .

Over 94 percent of the veterans who seek inpatient health care at VA medical facilities either have service-connected disabilities or are needy non-service-connected veterans. Over 56 percent of applicants for VA medical care are poor and not service-connected, meaning that they either qualify for VA needs-based pension, are eligible for Medicaid, or otherwise fall below income limits for Category-A veterans (currently $17,240 for a veteran with no dependents).

Ironically, some of the veterans who would be turned away from VA hospitals and other medical facilities would fall into the already strained safety net of other federal or federally supported health progams, such as Medicaid, the primary health-care program for very poor individuals. As Noted above, federal Medicaid funds, including payments for administrative expenses, are completely exempt from sequestration under GRH, as are VA's programs designed specifically for service-connected veterans and financially needy veterans. The Committee believes that the same principles that underlie these exemptions would apply to the Medical Care account exemption in the Committee bill. Moreover, since programs funded from the VA Medical Care account serve many veterans who are at or below the income limits for Medicaid and who cannot obtain adequate private-sector health insurance, reductions in expenditures for VA care world, in subtantial part, be offset by the expenditure of sequester-exempt Medicaid funds for the care of these individuals.

The Committee notes that sequestration no longer is the unthinkable event it was intended to be, with consequences so horrible that Congress and the President would never allow it to happen. The FY 1986 and 1990 sequestrations were very harmful—reducing already austere VA Medical Care account funding by $118 million and $158 million, respectively—and a potential FY 1991 sequestration more than three and half times as great as the FY 1990 sequestration would be a catastrophe for veterans' health care.

Cost: According to CBO, the enactment of section 706 would entail no costs.

Suspensions of Payment of Pension to Institutionalized Veterans Receiving Pension

Subsections (a) and (b) of section 708 of the Committee bill, which are derived from section 5 of S. 2454 as introduced at the request of the Administration, would, effective October 1, 1990 (a) extend from three to twelve months the period during which a veteran with no spouse or dependent children may be furnished domiciliary or nursing-home care by VA before the veteran's VA pension is reduced; and (b) provide that, when a veteran's pension is reduced, up to $10,000 of the benefits withheld would be repaid to the veteran upon discharge from the facility.

Background

Needs-based VA pension is paid to wartime veterans who have permanent and total non-service-connected disabilities or are 65 years of age or older.

Section 3203(a)(1)(A) and (B) of title 38 limit the amount of needs-based pension that VA may pay to veterans who have no dependents and are being furnished domiciliary or nursing-home care VA for extend periods. When the veteran has been institutionalized for three full calendar months following the month of admission, the veterans' pension generally may not exceed $90 per month. (Section 111 of the Veterans' Benefits Amendments of 1990 (Public Law 101–237) eliminated the pension reduction for VA-hospitalized veterans.) The rationale for this limitation is that, since the government already is providing for the veteran's basic needs including medical care, food, and shelter while the veteran is institutionalized, the veteran does not require the full needs-based pension after a certain amount of time.

The Congress also has recognized, however, that veterans receiving institutional care retain significant financial responsibilities. This was the rationale behind the provisions in Public Law 101–237 that eliminated the reduction for veterans in VA hospitals and extended from two to three months the pension cutoffs point for veterans in VA domiciliaries. However, in the April 10, 1990, letter transmitting the proposed legislation upon which these provisions are based, VA took the position that they did not go far enough. Secretary Derwinski stated that an additional nine months of full pension payments were needed to ensure that "hardship and unnecessary institutionalization are . . . avoided". The Committee notes that, for veterans receiving care for periods longer than three months, the reduction in pension benefits can mean the differences between being able to return to an independent life and being overwhelmed by financial obligations that mount during institutional care.

In most cases, the largest continuing expense is rent. By definition, veterans receiving needs-based VA pension benefits lack financial resources and are unlikely to have sufficient income or assets—aside from their pensions—from which to pay their rent. Without full pension payments, they are likely to be forced to give up their homes. Those veterans also would lack the resources to pay the security deposit and any advance rent required for a new apartment they would need upon release from the hospital or nursing home, or to meet other financial obligations that continued during their institutionalization.

Under current law, veterans permanently forfeit these pension reductions. VA has urged that veterans be repaid up to $10,000 of the amounts withheld. As the Secretary stated in the April 10 transmittal letter, repayment of withheld pension would enable discharged veterans to meet the high initial costs of returning to the community after an extended period of domiciliary or nursing-home care.

Committee bill

Section 708 (a) and (b) of the Committee bill would (a) extend from three to twelve months the period during which a veteran with no spouse or dependent children may be furnished domiciliary or nursing-home care by VA before the veteran's VA pension is reduced; and (b) provide that, when a veteran's pension payments are reduced as a result of the veteran being furnished such care by VA, up to $10,000 of the benefits withheld would be repaid to the veteran upon discharge.

The Committee agrees with the Administration that these provisions are well-designed to assist veterans who have received domiciliary or nursing-home care to return to life in their communities.

Cost: According to CBO,the enactment of section 708(a) and (b) would entail estimated costs of $6 million in budget authority and outlays in FY 1991 and total estimated costs of $33 million in both budget authority and outlays in FYs 1991-1995.

Other Miscellaneous Provisions

Sections 708(c), 709, and 710 of the Committee bill are derived from sections 103(c), 701, and 704, respectively, of S. 13 as reported by the Committee on September 13, 1989 (S. Rept. No. 101-126), without substantive change (except that the effective date of section 708(c) is deferred in light of the fact that the anticipated date of enactment is now one year later).

The background, descriptions, and explanations of these provisions are set forth in the report accompanying S. 13 on pages 96-98, 291-93, and 297-303, respectively, as are Senator Cranston's additional views on section 701 of S. 13, relating to VA medical center security, which corresponds to section 709 of the Committee bill.

Section 711 of the Committee bill derives from section 706 of S. 13 as amended on the floor of the Senate by a Committee amendment, substituted for the text of H.R. 901, and passed by the Senate on October 3, 1989.

The background, description, and explanation of this provision are set forth, in the statement of Chairman Cranston regarding the Committee modification, on pages S 12,563-64 of the *Congressional Record* for October 3, 1989.

Cost: According to CBO, enactment of section 708(c) would entail estimated costs of $12 million in both budget authority and outlays in FY 1991 and total estimated costs of $92 million in both budget authority and outlays in FYs 1991-1995 and enactment of section 710 would entail estimated savings of $37 million in budget authority and $28 million in outlays in FY 1991 and total estimated savings of $809 million in budget authority and $787 million in outlays in FYs 1991-1995.

COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (CBO), estimates that the costs resulting from the enactment of the Committee bill (as compared to costs under current law), as scored against the current ("summer") CBO baseline during the first five years following enactment would be $629 million in budget authority and $563 million in outlays in FY 1991; $744 million in budget authority and $742 million in outlays in FY 1992; $716 million in budget authority and $722 million in outlays in FY 1993; $599 million in budget authority and $648 million in outlays in FY 1994; and $553 million in budget authority and $559 million in outlays in FY 1995. If scored against the February 1990 CBO baseline, the cost would be $626 million in budget authority and $561 million in outlays in FY 1991; $756 million in budget authority and $752 million in outlays in FY 1992; $736 million in budget authority and $741 million in outlays in FY 1993; $623 million in budget authority and $669 million in outlays in FY 1994; and $582 million in budget authority and $588 million in outlays in FY 1995. The cost estimate provided by CBO, setting forth a detailed breakdown of the costs follows:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

Robert D. Reischauer
Director

July 19, 1990

Honorable Alan Cranston
Chairman
Senate Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has prepared the attached revised cost estimate for S. 2100, Veterans' Benefits and Health-Care Amendments of 1990, as ordered reported by the Senate Committee on Veterans' Affairs, July 12, 1990. The revised estimate reflects changes in the bill language and corrections in the estimates of certain sections that were made after the July 17 estimate of S. 2100 was transmitted to the Committee.

The final language of S. 2100 was not available at the time this estimate was prepared. The estimate is based on a Committee draft. The estimate may not correspond to the final bill if the final bill differs from the draft language.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer

Attachment

cc. Honorable Frank H. Murkowski
Ranking Minority Member

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

REVISED
July 19, 1990

1. BILL NUMBER: S.2100

2. BILL TITLE:

Veterans' Benefits and Health-Care Amendments of 1990.

3. BILL STATUS:

As ordered reported by the Senate Committee on Veterans' Affairs, July 12, 1990.

4. BILL PURPOSE:

To increase the benefit rates for disability compensation and dependency and indemnity compensation; to provide therapeutic residences for homeless chronically mentally ill veterans; to increase salaries of physicians, dentists, and nurses working for the Department of Veterans Affairs; and for other purposes.

5. ESTIMATED COST TO THE FEDERAL GOVERNMENT:

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Scored Against February Baseline					
Direct Spending					
Budget Authority	423	423	376	373	370
Outlays	390	426	381	412	371
Authorization					
Authorization Level	203	333	360	250	212
Outlays	171	326	360	257	217
Scored Against Summer Baseline					
Direct Spending					
Budget Authority	426	411	356	349	341
Outlays	392	416	362	391	342
Authorization					
Authorization Level	203	333	360	250	212
Outlays	171	326	360	257	217

The cost of this bill would fall in budget function 700.

Basis of Estimate

The following section-by-section cost analysis addresses only those sections of the bill that could be expected to have a significant budgetary impact.

Section 101. This section would increase the rates of disability compensation and dependency and indemnity compensation (DIC) on December 1, 1990, by the same percentage that Social Security benefits are increased on that date.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Scored Against February Baseline					
Budget Authority	397	472	469	467	465
Outlays	358	472	469	505	465
Scored Against Summer Baseline					
Budget Authority	435	518	515	513	510
Outlays	393	518	515	554	510

The CBO February baseline assumed that a 4.1 percent cost-of-living adjustment (COLA) would be made in Social Security benefit rates on December 1, 1990. The economic forecast underlying the CBO summer baseline, however, indicates that the Social Security COLA is more likely to be 4.5 percent. Estimates of both a 4.1 percent COLA and a 4.5 percent COLA in compensation rates are shown above.

These estimates were calculated by multiplying the average costs in each year for all disability compensation cases and for all DIC cases by the COLA percentage. The resulting average increase in costs per year were then multiplied by the estimated number of cases in each program each year to calculate the annual cost. Future average cost and caseload levels were projected according to historical trends for recipients by period of service.

Section 111. Under current law, certain diseases of veterans who were exposed to ionizing radiation during military service are presumed to be service-connected. This section would extend the same presumption to certain reservists who were similarly exposed.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Budget Authority	1	1	1	1	1
Outlays	1	1	1	1	1

According to the Defense Nuclear Agency (DNA), approximately 2,000 individuals would be covered by this provision. Of this number, it is expected that fewer than 40 individuals would be suffering from one of the covered illnesses.

Section 112. This section would expand the list of diseases presumed to be service-connected in radiation-exposed veterans to include cancer of the salivary glands and cancer of the urinary tract. The latency-period limitations would also be removed for all diseases.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Budget Authority	6	8	11	14	17
Outlays	5	8	11	14	17

The veterans affected by this bill are those who were exposed to ionizing radiation while participating in the military occupation of Hiroshima and Nagasaki or in military tests involving atmospheric detonation of nuclear devices.

The cost of this section was estimated using a computer model that operates on data from several sources. The number of veterans participating in the occupation and nuclear testing, distributed by date of exposure, was supplied by the House Veterans' Affairs Committee staff. The normal incidence of, and one- through five-year relative survival rates for specific cancers in the general population of males age 55 and older was supplied by the Demographic Analysis Section of the National Cancer Institute (NCI). Remarriage and death rates for surviving spouses of affected veterans were taken from census data involving widows, by age group, in the general population. The basic estimates were adjusted to reflect the actual experience of the VA with compensation benefits for radiation exposure since these benefits were enacted in 1988 (P.L.100-321).

Section 122. This section would establish a presumption of service-connection for certain diseases of veterans who were exposed to Agent Orange during service in the Republic of Vietnam. The diseases covered by this section are non-Hodgkin's lymphoma, soft-tissue sarcoma (other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, and mesothelioma), and chloracne.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Scored Against February Baseline					
Budget Authority	35	58	66	70	74
Outlays	33	56	65	70	74
Scored Against Summer Baseline					
Budget Authority	0	0	0	0	0
Outlays	0	0	0	0	0

In March of this year, the VA announced that it would begin paying compensation benefits to veterans with service in the Republic of Vietnam who contract non-Hodgkin's lymphoma (NHL). This decision was based on the findings of a study by the Centers for Disease Control (CDC), The Association of Selected Cancers with Service in the U.S. Military in Vietnam (The Selected Cancers Cooperative Study Group,CDC,March 29, 1990.), which indicated that veterans with Vietnam service had an incident rate for NHL that was 150 percent of the rate for all U.S. males in the same age category.

In May, the VA announced that compensation benefits would also be paid to Vietnam-service veterans with soft-tissue sarcoma (STS). This decision resulted from the recommendations of the Agent Orange Advisory Committee. The VA has paid compensation benefits for chloracne for several years.

Because the effects of the Administration's actions to extend compensation benefits to veterans with NHL and STS are not reflected in the CBO February baseline, the cost of this extension becomes attributable to section 122 when S.2100 is scored against the February baseline. The CBO summer baseline, on the other hand, reflects the changes. Section 122, therefore, has no cost when scored against it.

Section 123. This section would require the Secretary of Veterans Affairs to contract annually for surveys of scientific information regarding the relationship between Agent Orange exposure and the development of disease. Based on these surveys, the Secretary would prescribe regulations to establish a presumption of service-connection for any diseases of Vietnam-service veterans for which a positive relationship with Agent Orange exposure is found.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	1	*	*	*	*
Outlays	1	*	*	*	*

* Less than $500,000.

The surveys mandated by this section would involve comprehensive reviews of completed and ongoing scientific studies and any other scientific evidence of the effects of herbicide agents on humans and animals. All surveys after the first would be updates of the initial survey. The above estimate is based on the cost of similar studies; outlays are projected according to historical spending patterns.

There is no way of estimating in advance which, if any, diseases may be determined as a result of the surveys to be positively associated with Agent Orange exposure. This estimate, therefore, does not include any costs that may result from future extensions of compensation coverage to Agent Orange-exposed veterans.

Section 124. This section would require the VA to compile and analyze all clinical data obtained from examinations and treatment of Vietnam veterans for conditions that are suspected to be related to Agent Orange exposure.

The VA currently maintains in the Agent Orange registry clinical data from the initial and first follow-up examinations of all Vietnam-service veterans who are willing to participate in the registry. Under this provision, any further examinations or treatments after the first follow-up visit would have to be recorded as well. Adding this information to the registry should not have a significant cost.

Section 125. This section would require the VA to establish and maintain a system for the collection and storage of blood and tissue samples voluntarily contributed by veterans with Vietnam service. The specimens would be available for future scientific research on the health effects of dioxin and other toxic agents in herbicides used in Vietnam.

According to the CDC, the sterility requirements for obtaining blood and tissue samples from Agent Orange-exposed veterans would need to be extremely stringent, because such low concentrations of dioxin (a few parts per billion) are suspected of being potentially toxic. Therefore, acceptable samples could not be collected by a veteran's personal physician or even by the average physician in a VA hospital, unless they were trained in the necessary procedures. The CDC recommends that one or two special facilities be established and maintained by the VA for the sole purpose of collecting and storing the specimens.

If the CDC's recommendations were followed, the number of voluntary contributions by veterans would probably be fairly small, because veterans would have to travel to the special facilities to donate samples. Assuming that 1,000-2,000 blood samples would be contributed over a five-year period to one or two repositories established in existing VA medical facilities, the cost of collecting and storing the samples should be less than $500,000 a year. If, however, a larger number of veterans are willing to travel to the collection centers to donate samples, greater storage space would be needed than is assumed here. Under these circumstances, the cost could exceed $1 million a year. These estimates are based on the costs experienced by specimen repositories operated by the National Bureau of Standards, the NCI, and the CDC.

Section 129. This section would extend from September 30, 1990 to December 31, 1993, the authority of the VA to provide medical care to veterans for conditions possibly related to exposure to Agent Orange or ionizing radiation during military service.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	16	17	5	0	0
Outlays	14	17	7	0	0

During fiscal year 1989, the VA treated more than 130,000 veterans on an outpatient basis for conditions possibly related to Agent Orange and radiation exposure, and nearly 300 veterans were treated on an inpatient basis. The above estimate assumes that the demand for care from this group would continue to grow slowly, according to historical trends. Average cost data for this care were not available from the VA. The cost of care was, therefore, assumed to be the same as the overall average cost for outpatient or short-term inpatient care in VA facilities. These costs were increased in the outyears for anticipated inflation.

Section 201. This section would provide entitlement to inpatient or outpatient psychiatric care to veterans who are diagnosed by a VA mental-health professional as suffering from post-traumatic stress disorder (PTSD) that is related to their military combat duty. Under current law, the disorder would have to be formally adjudicated as a service-connected condition before the veteran would be considered entitled to medical care.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	29	31	33	36	39
Outlays	29	31	33	36	38

According to VA data, there are around 39,000 veterans each year who are referred by Vet Centers to VA medical centers to be evaluated for PTSD. Of these, VA estimated that approximately 13,000 veterans needing outpatient treatment do not receive care, because the VA outpatient mental-health treatment capacity is insufficient to handle the workload. This estimate assumes that the outpatient capacity would be expanded under this provision to accommodate the treatment needs of these veterans. According to VA sources, veterans with PTSD usually receive an average of 10 visits per year at an average 1988 cost of $46.51 per visit. This average cost amount was increased for anticipated inflation.

In addition, there are currently about 500 veterans on waiting lists for places in PTSD inpatient treatment programs. This estimate assumes that inpatient treatment facilities would be expanded to accommodate the veterans on the waiting lists. Also based on VA information, it was assumed that inpatient PTSD treatment would involve approximately 90 days of inpatient care over a one-year period. The average per diem cost for all psychiatric inpatient care ($206 in 1989) was used to calculate the cost.

Section 203. This section would require VA to establish up to five centers for mental-illness related research, education, and clinical activities. In 1991, $3.125 million is authorized to be appropriated for this activity, and $6.25 million in each of fiscal years 1992-1994.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Authorization Level	3	6	6	6	0
Outlays	1	6	7	7	*

* Less than $500,000.

The authorization levels stated in the bill were assumed to be fully appropriated. The outlays were estimated according to historical spending patterns adjusted to reflect the slower initial spending of a new program.

Section 211. This section would authorize the VA to provide prosthetic devices to veterans who are eligible for VA outpatient treatment only to the extent that such care would obviate the need for inpatient care.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	7	7	7	7	7
Outlays	6	7	7	7	7

According to VA sources, there is no data available on the number of veterans in this eligibility category who might need prosthetic devices. The above estimate assumes that this provision would increase the cost of supplying prosthetic appliances by 5 percent.

Section 213. This section would raise the limitation on home improvements and structural alterations (HISA) that are necessitated by a veteran's medical condition. For veterans with entitlement to ambulatory services, the ceiling would be raised from $2,500 to $5,000; for other eligibles, the ceiling would increase from $600 to $1,200.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	2	2	2	2	2
Outlays	2	2	2	2	2

According to VA data, the cost of HISA in 1991 under current law is expected to be $1.7 million. Because most HISA projects cost more than the proposed ceilings, it is expected that program costs would double with the doubling of the ceilings.

Section 214. This section would make permanent the program of community-based contract alcohol and drug treatment, which is scheduled to expire on September 30, 1991.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	0	9	9	9	10
Outlays	0	8	9	9	10

According to VA information, the agency will spend $7.9 million on contract alcohol and drug treatment for veterans during 1990. This level of program activity was assumed to remain constant through the projection period. Program costs were increased for anticipated inflation and were assumed to outlay according to historical spending patterns.

Section 215. This section would extend for five years the VA's authority to make contracts and grants to the Veterans' Memorial Medical Center in the Republic of the Philippines. The section would also authorize the appropriation of $1 million annually in fiscal years 1991-1995.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Authorization Level	1	1	1	1	1
Outlays	*	1	1	1	1

* Less than $500,000.

This estimate assumes that the amounts authorized by section 215 would be fully appropriated and would outlay according to historical spending patterns.

Section 217(a). This section would extend through December 31, 1993, the VA's authority to sell at a discount residential property from its inventory to non-profit organizations that would use the property to provide shelter to homeless veterans. The authority would also be expanded to allow discounted sales to provide transitional housing for veterans recovering from substance abuse or mental illness disabilities.

The VA's existing authority to sell properties to homeless organizations at a discount expires on October 1, 1990. During the nearly three years this authority has been in effect, the VA has sold only two properties. It is not expected, therefore, that the extension and expansion of the authority would have a significant budgetary impact.

Section 217(b). This section would establish a new revolving fund, the Transitional Housing Fund, from which the VA would be authorized to make loans to groups of veterans who are in, or have recently completed, programs for the treatment of substance abuse. The loans would assist such veterans in leasing housing units for use as transitional group residences. The maximum amount of such loans to any one group would be $4,000. The fund would be capitalized by the transfer of between $100,000 and $900,000 from the Canteen Service Revolving Fund.

The transfer of funds from the Canteen Service Revolving Fund to the Transitional Housing Fund would result in 1991 outlays of $0.9 million from the former account and $-0.9 million from the latter account. At this level of capitalization, it is expected that the outlays for loan disbursements would be less than $500,000 a year.

Section 218(a). This section would require the director of each VA medical center and of each VA regional office to prepare an analysis of homeless veterans in the area served by the medical center or regional office. This analysis should include:

- an assessment of the needs of homeless veterans with respect to health care, education and training, employment, shelter, counseling, and outreach services;
- the extent to which these needs are currently being met by federal, state, local, and private efforts on behalf of the homeless; and
- a plan for each of fiscal years 1991, 1992, and 1993 for the provision of services by the medical center or regional office to meet these needs through existing programs and available resources.

(By fiscal years, in millions of dollars)	1991	1992	1993	1994	1995
Estimated Authorization Level	1	*	*	0	0
Estimated Outlays	1	*	*	0	0

* Less than $500,000.

The estimate of the cost of preparing the homeless assessments is based on the cost of other studies requiring the participation of all VA installations.

Section 218(b). This section would authorize the appropriation of $1.5 million in each of the next three years for the conduct of a pilot program to provide domiciliary care to homeless veterans through contracts with community-based organizations.

(By fiscal years, in millions of dollars)	1991	1992	1993	1994	1995
Authorization Level	2	2	2	0	0
Estimated Outlays	1	2	2	*	0

* Less than $500,000

This estimate assumes that the full amount authorized would be appropriated and would outlay according to historical spending patterns.

Section 218 (e). This section would extend for three years the authorization of appropriations for two VA homeless assistance programs: the domiciliary care program and the program of care for homeless chronic mentally ill veterans. For these purposes, appropriations of $50 million in 1991, $57.5 million in 1992, and $65 million in 1993 would be authorized.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Authorization Level	50	58	65	0	0
Estimated Outlays	43	56	64	10	0

This estimate assumes that the full amount authorized would be appropriated and would outlay according to historical spending patterns.

Section 219. This section would extend for one year the pilot program of mobile health-care clinics to provide health services to veterans residing in isolated rural areas. The authorization of $5 million for this purpose would also be extended to 1991, with the additional proviso that the appropriated funds would remain available until expended. The program is currently authorized through the end of fiscal year 1990.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Authorization Level	5	0	0	0	0
Outlays	0	2	3	0	0

This pilot program was originally authorized in P.L.100-322. The VA received appropriations of $3 million in each of fiscal years 1989 and 1990. Nevertheless, the VA does not yet have a single mobile clinic operating. In fact, they have not yet found out how much such a clinic might cost. The estimate above assumes that VA will have progressed to the acquisition stage by 1991, but it is expected that they will be unable to spend any funds beyond the $6 million already available before 1992.

Section 220. This section would authorize the VA to provide services to achieve pregnancy to a veteran or a veteran's spouse where such services are necessary to overcome a service-connected disability that impairs the veteran's ability to procreate.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	1	2	1	1	2
Outlays	1	2	1	1	2

The above estimate includes the cost of three treatment modalities: artificial insemination, in vitro fertilization, and drug and hormonal therapy. If any of these modalities are prohibited, or if new forms of treatment are developed, the cost of this provision could be significantly different from the estimate above.

This estimate is based primarily on data from two studies published by the Office of Technology Assessment (OTA): Infertility: Medical and Social Choices (OTA-BA-358, May 1988) and Artificial Insemination: Practice in the United States (OTA-BP-BA-48, August 1988). According to these sources, there are nearly 16,000 male veterans and 1,200 female veterans who are under age 55 and who have service-connected conditions related to infertility.

It was assumed that the spouses of all affected male veterans would be potential candidates for artificial insemination, involving either the veteran's sperm or donor sperm. Since some of these veterans would not seek such services and some will have used services elsewhere, only 2,300 veterans were assumed to apply for artificial insemination services from VA over a ten-year period. The average cost of such services was estimated at $2,485 in 1991. This cost was increased for anticipated inflation in the outyears.

Of the female veterans, 434 were assumed to be candidates for in vitro fertilization, and 80 of those were assumed to seek treatment from the VA over a six-year period. Eight newly disabled female veterans were also assumed to seek treatment each year. According to the OTA study, the total cost of in vitro fertilization would be approximately $30,800 in 1991. This cost, however, would be spread over the typical four-year course of treatment.

An additional 274 female veterans were assumed to be candidates for hormone/drug therapy. It was estimated that 40 of these would seek treatment from the VA over six years. The estimated cost of this form of treatment, which averages three years in duration, would be about $16,200 in 1991.

Section 221. This section would establish a pilot program to provide non-institutional, supervised housing -- referred to as therapeutic residences (TRs) -- for participants in VA Compensated Work Therapy (CWT) programs. The TRs could be established in two ways: directly by the VA or by private non-profit corporations that operate CWT programs for veterans. Non-profit corporations wishing to participate in the TR program would be eligible for subsidized loans from the VA to assist with the acquisition of residences. VA medical centers wishing to establish TRs could purchase houses from the real property inventory of the Loan Guaranty Revolving Fund at discounted prices. The cost of the TR program would be financed through transfers of unobligated balances from the General Post Fund to the Special Therapeutic and Rehabilitation Activities Fund (STRAF), which finances the CWT program. A total of $5 million is authorized to be appropriated from the STRAF for this program over the five-year period from 1991-1995.

(by fiscal years, in millions of dollars)	1991	1992	1993	1994	1995
Authorization Level	1	1	1	1	1
Outlays	*	1	1	1	1

* Less than $500,000.

The $5 million authorized to be appropriated over the next five years was assumed to be made available at the rate of $1 million a year. The outlay estimate is based on the amount of time necessary to establish and qualify the non-profit corporations and to establish VA-operated therapeutic residences.

Section 222. This section would require the VA to conduct a four-year pilot program of noninstitutional alternatives to nursing home care. Under the pilot program, contract services; such as homemaker, transportation, rehabilitation, and personal care services; would be provided to enable certain veterans to manage outside of a nursing home. Expenditures for these services for a veteran would be limited to 65 percent of the cost of furnishing nursing home care to the veteran.

(by fiscal years, in millions of dollars)	1991	1992	1993	1994	1995
Estimated Authorization Level	5	9	12	15	0
Outlays	4	8	11	14	2

No authorization level is provided by section 222 to indicate the participation level anticipated by the Senate Veterans' Affairs Committee for this pilot program. The VA has not yet determined the level at which the program would be conducted. In the absence of any guidance, the above estimate assumes that 300 veterans would participate in the program in 1990 at ten demonstration sites, with the number growing to 700 participants by 1994. It was also assumed that any nursing home beds vacated by veterans participating in the pilot program would be filled by other eligible veterans currently on waiting lists for nursing home beds.

Because the cost of the alternative services would be limited to 65 percent of the cost of nursing home care ($22,536 on the average per patient treated in 1989), it would cost significantly less to care for veterans in this manner than as nursing home patients. However, because it was assumed that any nursing home vacancies created by the pilot program would be filled from waiting lists, the cost of contract home-care services would not be offset to any significant degree by reductions in the cost of nursing home care.

Section 223. This section would make permanent the authorization of the VA preventive medicine program. While the language of the section does not specifically authorize appropriations for this activity, maximum annual expenditure limits are established.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	16	17	18	19	20
Outlays	14	17	18	19	20

This estimate assumes that funds equal to the maximum annual expenditure limits stated in the bill would be appropriated for this activity. Outlays are estimated according to historical spending patterns for the Medical Care account.

Sections 224. This section would establish a pilot program during fiscal years 1991-1994, under which the VA would furnish helper monkeys and dogs to quadriplegic veterans.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	1	*	*	*	0
Outlays	1	*	*	*	0

* Less than $500,000.

No authorization level is provided by section 224 to indicate the participation level anticipated by the Senate Veterans' Affairs Committee for this pilot program. The VA has not determined the level at which the program would be conducted. In the absence of any guidance, the above estimate assumes that the VA would furnish 40 quadriplegic veterans with either a specially-trained helper monkey or a specially-trained helper dog. It was assumed that 20 monkeys and 20 dogs would be furnished. Based on information from the Senate Veterans' Affairs Committee staff, the average cost of a helper monkey, including teaching the veteran how to interact with the monkey, is estimated at $20,000. The average cost of a helper dog is estimated at $7,500.

Many places that train helper monkeys and dogs request payment of the full price for the animal before they will begin to train it. Thus, it is expected that the VA would be required to outlay the funds for most of the animals in the first year, even though some of the animals would not be placed in the first year.

Section 228. This section would raise the dollar limit from $500 to $1000 for contract dental treatment that does not require a second opinion by a VA-staff dentist.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	-1	-1	-1	-1	-2
Outlays	-1	-1	-1	-1	-2

Approximately 11,000 second-opinion dental exams are performed each year by VA dentists. Very few of the procedures costing less than $1000 are overruled. VA estimates that 9,000 of these exams would be eliminated by this provision, saving around $1 million a year.

Section 242. This section would establish a new program of assistance to students in post-secondary health-related educational programs in exchange for an agreement to work in the VA for a specified period after graduation. The program would be limited to individuals participating in the Reserve GI Bill and would supplement their GI Bill benefits with an additional $400 monthly stipend.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	8	8	8	9	9
Outlays	6	8	8	9	9

The VA would be authorized to select from qualified applicants from the Reserve GI Bill program for the new stipend program. However, the language of section 232 provides no guidance on the intended number of trainees to be accepted into the new program. This estimate bases the size of the program on the number of reservists who would be likely to use GI Bill benefits for a degree in certain health-care fields.

An estimated 1,700 reservists would be expected to join the program each year starting in 1991. Eighty percent would be expected to participate for one year and the remaining 20 percent for two years. This would result in about 2,000 trainees receiving benefits in each year from 1992 through 1995. It was assumed that each participant would train for nine months a year. The monthly stipend, which would be indexed to federal pay increases, is estimated to rise from its initial level of $400 a month to $480 by 1995.

This estimate is based on data from the VA, the Council of Allied Health Education Programs, and CBO baseline assumptions. It is assumed that all necessary funds would be appropriated and would outlay according to the spending patterns of similar training programs.

If funds are appropriated for this program and it attracts new participants into the Reserve GI Bill, there could be an increase in Reserve GI Bill outlays. The use of GI Bill benefits correlates positively with the size of the benefit available. Because the combined benefit to reservists under this program would be increased, some increase would be expected in participation in the GI Bill. The estimated increase in Reserve GI Bill program spending would be about $1 million a year.

Section 243. This section would require each VA health-care facility to perform an annual survey of wage rates for nurses and certain other medical personnel in its locality. Based on this survey, VA wage rates would be adjusted to a level competitive with the rest of the community. Rates for existing VA personnel could only be adjusted if the survey indicates that an increase is appropriate. Rates for new hires, however, could be increased or decreased to be brought into line with the community standard. The first surveys would be conducted no later than June 1, 1991, with the corresponding salary adjustment effective with the first pay period beginning on or after July 1, 1991. Thereafter, annual surveys would be conducted by December 1 of each year, with adjustments effective with the first pay period beginning on or after the following January 1.

The cost of this provision cannot be effectively estimated before the first set of wage surveys is conducted, because there is no data base available that is adequate to compare salaries of VA and non-VA nurses on a locality-by-locality basis. However, based on the number of VA nurses who are currently paid at the maximum salary level, it is estimated that salary increases costing in the range of $5-10 million annually would result from this authorization.

Section 244. Under current law, a nurse working overtime is paid at 150 percent of her hourly rate of pay, up to 150 percent of the minimum rate payable to an Intermediate grade nurse. This section would remove the limitation, allowing nurses to receive overtime pay at 150 percent of their basic pay rate, regardless of their grade level.

	(By fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	3	3	4	4	4
Estimated Outlays	3	3	4	4	4

In fiscal year 1988, VA nurses worked nearly one million hours of overtime, earning more than $32.5 million in overtime pay. It was estimated that the average hourly overtime rate--approximately $33 in 1988--would increase by around $3 as a result of this provision. It was assumed that the number of hours of overtime worked would remain the same in future years.

Section 245. This section would provide that nurses who are holding head nurse positions would have their hourly rates of pay increased by 6 percent.

	(By fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	5	5	6	6	6
Estimated Outlays	5	5	6	6	6

According to VA data, there are 2,337 head nurse positions in the VA system. The current average salary for these positions is $34,320. The average increase in pay for head nurses under this measure would be $2,059. This increase would grow in future years with federal payraises.

Section 248. This section would provide that, whenever a nurse obtains recertification in her specialty, the nurse would receive a bonus equal to 1.0 percent of her base pay. The VA currently increases the pay of any nurse obtaining initial certification in a specialty by between one and five pay steps. No increase or award is currently made, however, for recertification.

	(By fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Estimated Authorization Level	1	1	1	2	2
Estimated Outlays	1	1	1	2	2

The VA has no data on the number of nurses receiving recertification each year, the number of nurses newly certified per year, or even the total number of nurses who are certified. Thus, it is not possible to make a reliable estimate of the cost of this provision. If it is assumed that

50 percent of all VA nurses are currently certified and obtain recertification every five years, the cost of recertification bonuses would be approximately $1 million per year. If 75 percent are certified, the cost of bonuses would be around $1.5 million annually. The estimate above assumes that 65 percent of VA nurses maintain certification.

Section 252. This section would authorize the payment of performance awards and cash awards to VA employees who are employed under the authority of title 38, U.S.C., rather than under title 5. The new VA performance and cash awards would mimic those under sections 5406 and 5407 of title 5 for regular civil service employees. This provision would take effect on October 1, 1991.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	0	27	29	30	31
Estimated Outlays	0	26	29	30	31

The formula in section 5406 of title 5 specifies that the amount of total performance awards in an agency should be not less than 1.15 percent and not more than 1.5 percent of aggregate basic pay. The above estimate uses the mid-point of this range to calculate the total amount of performance awards to be paid to VA title 38 employees. According to VA data, approximately $1.9 billion was expended for basic pay to these employees during fiscal year 1989. Thus, aggregate basic pay was multiplied by 1.325 percent and the result was increased for future federal payraises.

No cost is included above for cash awards to title 38 employees, because the VA already includes such employees in its existing cash awards program.

Section 253. This section would require the VA to establish and conduct a dependent care assistance program that meets the requirements of section 129 of the Internal Revenue Code of 1986 for employees of the Veterans Health Services and Research Administration.

Section 129 of the Internal Revenue Code of 1986 allows employers to establish dependent care assistance programs, under which employees may have amounts withheld from their pay to be set aside for dependent care. Amounts withheld would be excluded from income for tax purposes. The language of this section provides no guidelines as to the form the VA dependent care assistance program would take. Nor does it specify how, where, or under whose control the withheld funds would be maintained. Until the structure of this new program is defined by the VA, it is not possible to estimate its budgetary impact with any degree of precision.

Section 254. This section would authorize the appropriation of $5 million each year in 1991 and 1992 and $6 million each year in 1993 and 1994 for Health Manpower Training Grants.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Authorization Level	5	5	6	6	0
Estimated Outlays	*	1	2	3	4

* Less than $500,000.

There has been no appropriation made to this program in several years. Historically, the program has expended its funds very slowly. This phenomenon is recognized in the fact that the bill language authorizes the funds to remain available for five fiscal years after the year for which they are appropriated. The above estimate assumes that the amounts specified would be fully appropriated and would outlay according to historical trends.

Section 256. This section would increase the pay for VA clinical and counseling psychologists to a level competitive with the pay of similarly qualified psychologists in comparable jobs outside the VA.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	1	2	2	2	2
Estimated Outlays	1	2	2	2	2

According to VA data, there are 435 full-time clinical and counseling psychologists working in the agency at an average salary of $39,400. No data are available on part-time psychologists, but VA staff believes that the number working part-time is small.

According to the American Psychological Association, the national median salary of a psychologist working in a private general hospital, with 5-9 years of experience is $42,500. Based on this information, the estimate assumes that the average increase under this provision would be $3,100 in 1990. This amount was increased for future federal payraises.

Section 262. This section would revise the special pay program for VA physicians and dentists. Under this program, physician and dentist salaries are increased by certain amounts based on factors such as length of service, level of responsibility, and service in a specialty or geographical are facing recruitment and retention difficulties. While the majority of special pay categories would be increased under this provision, primary special pay, which currently provides $7,000 a year to each full-time physician and $2,500 to each full-time dentist, would be eliminated. The language provides, however, that physicians and dentists who are employed by VA at the time of enactment and who are receiving special pay only in the categories of primary, full-time, and length of service pay, would be protected from any reduction in total special pay.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	34	64	66	68	71
Estimated Outlays	32	64	66	68	71

This estimate is based on data from VA's 1989 "Report on the Implementation of Public Law 96-330," an annual report to the Committees on Veterans' Affairs reviewing the pay levels of VA physicians and dentists. Data on the number of physicians and dentists in various special pay categories were taken from this report and reflect employment levels for calendar year 1988. This is the latest data available. The estimate assumes that employment levels in the categories will remain relatively stable through the projection period.

Although the provision would be effective with respect to pay periods beginning more than 180 days after enactment and the estimate assumes an enactment date of October 1, 1990, only a half-year effect is estimated for 1991, because the VA historically has required considerable lead time to implement changes in special pay.

The special pay levels are stated in ranges in the bill. The estimate assumes that the average employee in each category would receive the special pay amount representing the midpoint of the range.

The bill provides that no physician or dentist who is employed by VA on the day before the effective date of the bill, and who is receiving special pay at that time only in the categories of primary, full-time, and tenure will have his or her total special pay reduced as a result of the bill. It is estimated that approximately 175 full-time and 390 part-time physicians would be affected by this provision. The number of dentists affected by the provision is estimated to be insignificant.

Section 251 also addresses the manner in which the increased special pay amounts would be included in basic pay for the purposes of computing retirement benefits. These salary increases, however, would be too small to significantly affect spending from the Civil Service Retirement Fund.

The estimate does not include any cost associated with the new special pay category for "exceptional qualifications within a specialty." The VA does not yet know the frequency with which they would grant this category of special pay. Nevertheless, since the maximum payable in this category is $15,000, widespread use could result in a significant cost.

Section 264. This section would provide for the reimbursement of up to $1,000 a year in expenses for continuing professional education by full-time board-certified physicians and dentists.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	4	4	4	4	4
Estimated Outlays	4	4	4	4	4

The estimated cost of reimbursement of continuing education expenses is based on data from the VA indicating that there are 4,430 full-time, board-certified physicians and 106 such dentists who would be eligible for reimbursement. The VA has no data on the number of eligibles who currently are involved in continuing education activities, but they expect that the vast majority participate in one form or another. The estimate assumes that 90 percent of eligible physicians and dentists would receive reimbursements.

Section 301. Under current law, funds available from DOL for job counseling, training, and placement services for veterans are established for each state at a level sufficient to support the appointment of one Disabled Veterans Outreach Program (DVOP) specialist for each 5,300 Vietnam era and disabled veterans in the state. However, after December 31, 1991, Vietnam era veterans will no longer be included in the current law calculation of DVOP specialists to be funded. This provision would continue the inclusion of Vietnam Era veterans through December 31, 1993.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	0	50	70	20	0
Estimated Outlays	0	50	70	20	0

This estimate reflects the difference between the cost of maintaining the current level of DVOP specialists through 1993 and the cost of reducing the number of specialists as required under current law. Because the current law reduction would occur on January 1, 1992, the fiscal year 1992 cost of the extension would cover only nine months of the year. Also, because the amendment would expire on December 31, 1994, the fiscal year 1994 cost is only a quarter-year effect.

Section 302. Under current law, the operation of the pilot Transitional Assistance Program (TAP) is limited to 10 states. This provision would remove that limitation.

(By fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Estimated Authorization Level	2	3	3	3	3
Estimated Outlays	2	3	3	3	3

The TAP provides training, information, and services to members recently separated from the Armed Forces. Based on discussions with staff at the DOL, CBO estimates that TAP would be expanded to serve all servicemembers separating in the continental U.S. and Europe. Currently, approximately 180,000 individuals separate annually in the U.S. and 40,000 in Europe. Based on participation rates in the TAP pilot program, it is estimated that 50 percent of those separating would participate.

The above estimate is based on the cost of holding 1,400 workshops annually, providing workbooks for each participant, providing training for workshop instructors, administration and travel. Workshops would be taught by one paid instructor and, in the U.S., one DVOP specialist. The salary cost for instructors is estimated at $1.4 million a year. Workbooks, at a per unit cost of $5, are expected to run $550,000 annually. Annual travel and instructor-training costs are estimated at $350,000 and $200,000, respectively. Automation costs would entail the purchase of one $5,000 computer per site in the U.S. (90 sites) and Europe (6 sites), for a total non-recurring cost of $480,000 in 1991. The DOL would also be required to evaluate TAP on a regular basis. The cost of gathering and maintaining data for these evaluations would be around $100,000 annually.

Section 307. This section would allow 1977 and 1978 graduates of the service academies and 1978 graduates of Reserve Officer Training Corps (ROTC) programs to become eligible for benefits under the Chapter 34 (title 38,U.S.C.) education assistance program. Under current law, these veterans are eligible to participate in the Chapter 32 (VEAP) program. To switch his participation to Chapter 34, a veteran would be required to notify the VA of his desire to change programs before January 1, 1991. Once the switch was made, the veteran would receive a refund of any unused VEAP contributions and payment of the applicable amount of Chapter 34 benefits minus any VEAP benefits for training that has occurred. CBO estimates that the cost of this provision would be less than $500,000.

Section 501. This section would allow totally disabled veterans under the age of 65 to acquire an additional $10,000 in life insurance coverage under the Service-Disabled Veterans Insurance (SDVI) program. Veterans opting for the additional coverage would be required to pay standard (non-disabled) premium rates.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Budget Authority	1	1	1	1	1
Outlays	1	1	1	1	1

There are approximately 170,000 policies in force under the SDVI program, of which about 25 percent are issued to veterans with total disability who have had their premiums waived. This estimate assumes that 75 percent of such veterans are below age 65 and that 50 percent of the eligibles would apply for the additional coverage. The cost from the higher claim payments that would result from this provision would be financed by budget authority appropriated to the Veterans Insurance and Indemnities account, from which it would outlay to the SDVI fund.

Section 502. This section would increase from $40,000 to $90,000 the maximum mortgage life insurance coverage available to severely disabled veterans under the Veterans Mortgage Life Insurance (VMLI) program.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Budget Authority	2	2	2	2	2
Outlays	2	2	2	2	2

More than 40 percent of all VMLI policies and over 60 percent of all policies issued during the last 10 years insure mortgages in which the initial balance exceeded $40,000, the current maximum coverage on a VMLI policy. The above estimate assumes that approximately 25 percent of current policyholders would apply for the additional coverage.

Section 704. This section would provide VA the authority to enter into a type of contractual arrangement referred to as an enhanced-use lease. Under an enhanced-use lease, the VA could lease land owned by the agency to a developer for an extended term and accept in-kind consideration in lieu of, or in combination with, rental payments. The in-kind considerations could include office, parking, or other space in a structure built by the developer on the leased land or maintenance, repair, or renovation services for VA buildings. This section would not authorize the VA to enter into a lease contract under which the VA would be obligated to make payments to the lessee for in-kind considerations that exceed the lease payments owed to VA, unless the budget authority necessary to cover such obligations is provided in advance in appropriation acts.

The VA could enter into no more than 30 enhanced-use leases, except that leases where the primary use of the leased space is to provide child-care services for VA employees would not be included in the limitation. The authority to enter into enhanced-use leases would expire on September 30, 1994.

It is not possible to estimate the budget impact of this provision with any degree of certainty, because the number and terms of possible enhanced-use leases have not yet been determined. It is expected, however, that the cash portions of such transactions would be relatively small. The in-kind or barter portion of the transactions would not be scoreable under current procedures.

Section 706. This section would exempt the VA Medical Care account from any requirement for sequestration of funds under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L.99-77), as amended by Public Law 100-119.

This provision would have no net impact on the federal budget. Since the deficit targets established by P.L.100-119 would not be changed by the provision, any required outlay reductions that are not achieved in the Medical Care account would have to be made elsewhere in the budget.

Section 708(a&b). Under current law, a veteran-pensioner who has no dependents and who is in a nursing home at VA expense will have his pension reduced to $90 a month after the fourth month of care. Under this provision, the veteran's pension would not be reduced until after a year of nursing-home care and all amounts withheld would be refunded to the veteran after discharge.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Budget Authority	6	6	7	7	7
Outlays	6	6	7	7	7

This estimate is based on a one-month count of pension benefits withheld from institutionalized pensioners in February, 1989. Since this count was taken, Public Law 101-237, the Veterans' Benefits Amendments of 1989, made two changes in the rules: pensioners in VA hospitals were exempted from reduction, and the maximum payable after reduction was increased from $60 to $90. As no new count of pension withholdings has been made, the data from the February 1989 count were adjusted for the estimated effects of the P.L.101-237 amendments.

The above estimate assumes that approximately 3,850 veterans will have about $180 a month withheld from their pension checks in 1990 under current law. Delaying the start of withholdings by eight months would cost approximately $6 million a year. It was also assumed that about 15 percent of the veterans still subject to withholding would be discharged each year and would receive refunds equal to one year's withholdings. It is estimated that fewer than 600 veterans a year would receive refunds at an annual cost of $300,000 to $400,000.

Section 708(c). Under current law, veterans without dependents, who have been determined to be incompetent to manage their affairs, and who are institutionalized at VA expense, have their pension payments suspended if their estates exceed $1,500. Benefits payments are resumed once the value of the estate falls to $500. This section would raise the ceiling on allowable estates to $6,000 and the benefit resumption level to $2,000. This change would be effective March 1, 1991.

	(by fiscal years, in millions of dollars)				
	1991	1992	1993	1994	1995
Budget Authority	12	20	20	20	20
Outlays	12	20	20	20	20

There is very little data on which to base an estimate of the cost of this proposal. According to a polling of several field stations that was performed by the VA earlier this year, there are approximately 580 adjustments made each month to this category of compensation and pension cases. Each adjustment either places a case in suspense for an excessive estate or places a case back on regular payment status after the estate has been spent down. Because some cases placed in suspense never return to payment status, it was assumed that 60 percent of the 580 adjustments were cases entering suspended status. Under section 708(c), each of these cases would receive $4,500 more in benefits before suspension, because the estate limitation would be raised from $1,500 to $6,000.

Section 710. This section would amend the Internal Revenue Code of 1986 to authorize access by the VA to income information reported by employers, financial institutions, and other organizations to the Internal Revenue Service (IRS). The VA would be permitted to use this data to verify the income reported by recipients of VA means-tested benefits, primarily VA pension. The provision would also amend title 38, U.S.C., to require the VA to independently verify conflicting data and to provide an opportunity for beneficiaries to contest the findings before benefits are reduced. Further, the VA would be required to notify all affected beneficiaries that reported income will be checked against IRS data. Finally, this section would require that the administrative cost of implementing these provisions be paid from funds appropriated to the Compensation and Pensions account.

(by fiscal years, in millions of dollars)

	1991	1992	1993	1994	1995
Benefit Savings					
Budget Authority	-46	-181	-251	-261	-272
Outlays	-37	-176	-246	-260	-271
Administrative Costs					
Budget Authority	9	36	50	52	54
Outlays	9	36	50	52	54
Net Budgetary Impact					
Budget Authority	-37	-145	-201	-209	-217
Outlays	-28	-140	-195	-208	-216

This estimate is based on data from two General Accounting Office reports, VETERANS' PENSIONS: Verifying Income with Tax Data Can Identify Significant Payment Problems (GAO/HRD-88-24, March, 1988) and Improving the Integrity of VA's Unemployability Compensation Program (GAO/HRD-87-62, September, 1987). The GAO estimated that approximately $160 million was overpaid in compensation and pension benefits in 1984 that could have been identified through a match of income reports from beneficiaries and reports to the IRS from employers, financial institutions, and other organizations. While a savings of this magnitude should be attainable eventually, it is expected that administrative difficulties would delay the achievement of this level of savings until 1992.

The estimate above assumes that the first computer match would be run on income reported for calendar year 1990. This data, as reported for VA benefit purposes, should be available in early 1991; IRS data for 1990 income should be available in October-November of 1991. Thus, the VA should be able to begin investigating and adjudicating dissimilar income reports in early 1992.

The GAO estimated that the administrative cost of identifying these overpayments would be approximately $14 million. This assumed an average administrative cost of $20.32 per case, which would cover 1.12 hours of adjudicator time. CBO expects that the average administrative cost would be about 250 percent higher than estimated by GAO for several reasons. First, the VA would be required by the provision to independently verify any reporting inconsistencies and to provide beneficiaries with the opportunity to refute its findings. This would involve considerably more adjudicator time than is provided for in the GAO estimate. Also, the GAO estimate failed to include costs for the investigation of fraud or for the collection of prior overpayments, which would further increase administrative costs.

6. ESTIMATED COST TO STATE AND LOCAL GOVERNMENT:

The Congressional Budget Office has determined that the budgets of state and local governments would not be significantly affected by the enactment of this bill.

7. ESTIMATE COMPARISON: None.

8. PREVIOUS CBO ESTIMATE:

On July 17, 1990, CBO transmitted an estimate of S. 2100 to the Senate Veterans' Affairs Committee. The above estimate is a revision to the earlier estimate reflecting certain reorganizations in the bill structure and corrections in the estimated costs of sections 122 and 214.

A number of the provisions in S.2100 are similar or identical to provisions in H.R.4557 and H.R.5002, as reported by the House Committee on Veterans' Affairs on April 26 and June 27, 1990, respectively. Any differences in cost estimates of similar provisions are the result of language differences.

9. ESTIMATE PREPARED BY: K. W. Shepherd, Cory Leach (226-2820)

10. ESTIMATE APPROVED BY:

James L. Blum
Assistant Director
for Budget Analysis

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact which would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any significant regulation of any individuals or businesses or result in any significant impact on the personal privacy of any individuals and that, except as noted below, the paperwork resulting from enactment would be minimal.

In the cases of provisions requiring reports to the Congress to provide program data and evaluations (sections 113, 123, 124, 126, 128, 203-05, 218, 220, 223-25, 227, 231, 243, 255, 262, 302, 602, 704, and 709) and the automated exchange of data between Government agencies (section 710), the amount of paperwork would be reasonable in light of the beneficial objectives of the legislation.

TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7 of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at a June 28, 1990, meeting that was continued on July 12.

On June 29, the Committee voted by voice vote to report S. 2100 favorably to the Senate with an amendment in the nature of a substitute.

Thereafter, on June 28, the Committee agreed to an amendment proposed by Senator Cranston to make all funds in VA's Medical Care account exempt from sequestration (section 706 of the Commitee bill). The vote was 6-4 as follows:

YEAS (6)	NAYS (4)
Alan Cranston	Bob Graham
Dennis DeConcini	Frank H. Murkowski
John D. Rockefeller IV	Alan K. Simpson
Daniel K. Akaka	Strom Thurmond
Arlen Specter	
James M. Jeffords	

On July 12, an amendment proposed by Senator Murkowski to include all servicemembers who are within 180 days of separation from active duty among those whom disabled veterans' outreach specialists and local veterans' employment representatives have responsibility for serving failed by a vote of 5-6, as follows:

YEAS (5)	NAYS (6)
Frank H. Murkowski	Alan Cranston
Alan K. Simpson	Dennis DeConcini
Strom Thurmond	George J. Mitchell
Arlen Specter	John D. Rockefeller IV
James M. Jeffords	Bob Graham
	Daniel K. Akaka

Also on July 12, an amendment proposed by Senator Mrukowski to strike the physicians' and dentists' special-pay provisions (sections 261-66 of the Commitee bill) and substitute the provisions of

S. 2732, the Administration-proposed special-pay measure, failed by a vote of 3-6, as follows:

YEAS (3)	NAYS (6)
Frank H. Murkowski	Alan Cranston
Alan K. Simpson	Dennis DeConcini
Strom Thurmond	George J. Mitchell
	John D. Rockefeller IV
	Bob Graham
	Daniel K. Akaka

Agency Reports

On October 18, 1989, the Committee Chairman asked the Secretary of Veterans Affairs for a report setting forth the agency's view on H.R. 1358; on February 13, 1990, for a report setting forth the agency's view on S. 2100; on May 3, 1990, for a report on S. 2537, and S. 2542; and on June 4, 1990, for a report on S. 2701. On June 12, 1990, the Committee Chairman asked the Secretary of Veterans Affairs for a supplemental report setting forth the agency's view on S. 2100. The views submitted in response to those requests, as well as a report from the Department of Veterans Affairs presenting the agency's view on H.R. 4557, which was received by the Committee on July 13, 1990, follow:

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

NOV 24 1989

Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Department of Veterans Affairs (VA) and our estimate of costs concerning H.R. 1358, an Act "To amend title 38, United States Code, with respect to the Montgomery G.I. Bill, and for other purposes."

This measure proposes amendments affecting the various education benefit programs for eligible veterans and other eligible persons administered by the VA, as well as our chapter 31 vocational rehabilitation program. With one exception, as further explained below, VA supports the provisions of H.R. 1358.

Section 1 of the bill first would provide that the 10-year delimiting period for using education benefits under chapters 30, 32, and 34 of title 38, United States Code, would commence from the date of last discharge from active duty of at least 90 continuous days.

Under current law, an individual's basic eligibility to use VA educational assistance benefits expires at the end of the 10-year period beginning on the date of such individual's last discharge or release from active duty. This clearly was intended to accommodate an individual who, for example, due to recall, reenlistment, or extension, serves a regular, full-time active duty tour beyond the individual's initial obligated period. It assures that such individual's benefits and right to use them are not diminished as a result of remaining on or reentering active duty. Thus, the individual retains the full 10-year opportunity to use his or her earned readjustment benefits.

Unfortunately, some persons have taken advantage of the breadth of the existing statutory delimiting date language to receive more than one full 10-year eligibility period. We note, for example, an instance in which a reservist, following expiration of his original delimiting period, voluntarily served on Active Duty in AGR status for brief periods (e.g., weekends) and claimed a new 10-year delimiting period based on his last discharge from such service. The plain language of the statute permitted this, though we believe that Congress surely could not have intended such a result.

Certainly, a more substantial period of service would be necessary to cause the type of disruption to civilian life which would merit a new, full eligibility period consistent with the law's readjustment purposes. Accordingly, VA agrees with the intent of this proposal to require that the last discharge or release referenced be from a period of active duty of at least 90 continuous days. We support this amendment.

Further, section 1 contains a "special rule" which would clarify that an individual who is an "eligible veteran" for purposes of chapter 34 as described in 38 U.S.C. § 1652(a)(1)(B), based in part on commencing a qualifying period of active duty within 12 months after January 1, 1977, and who subsequently establishes chapter 30 entitlement, would not have his or her delimiting period under chapter 30 reduced by any period in 1977 before the individual began active duty service. In our view, since such individuals were not eligible for and, consequently, had no opportunity to use chapter 34 benefits during the period specified in this provision, they do not fall within the category of persons to whom the delimiting period reduction was intended to apply. Thus, VA supports this clarifying amendment of section 1, as well.

Section 2 would bar receipt of benefits for chapter 32 of title 38 and chapter 106 of title 10 based on the same period of service. We note that this provision is similar to the prohibition in existing law against an individual's acquiring entitlement both to chapter 30 and chapter 106 education benefits based on the same period of military service. We believe it was merely an oversight to permit the chapter 32/chapter 106 entitlement duplication, and support this proposed correction as reflecting an appropriate and uniform legislative policy in this area.

With regard to section 3 of this measure, we note that Public Law 100-689, enacted last November, made some changes to the chapter 30 secondary school diploma requirement, among which was that those chapter 30 participants whose entitlement is based in part on chapter 34 eligibility could, as an alternative to meeting that requirement, successfully complete the equivalent of 12 semester hours in a program of education leading to a standard college degree. Section 3 of the pending measure would permit those chapter 30 participants who first entered active duty after June 30, 1985, to meet their secondary school diploma requirements in a similar manner if the degree credits are earned before completion of the individual's initial obligated period of active duty. We have no objection to this change which gives greater uniformity to these eligibility requirements.

Section 4 would extend eligibility for noncontributory GI Bill (chapter 34) education benefits to an individual who had commenced his or her third academic year either as a cadet or midshipman at one of the service academies or as a member of the Senior Reserve Officer Training Corps (SROTC) in a program of educational assistance under section 2104 or 2107 of title 10, United States Code, retroactive to January 1, 1977. The individual must have been separated after a period of at least 180 days active duty served pursuant to receiving a commission following service academy graduation or completion of advanced SROTC under other than dishonorable conditions.

The VA does not support this provision. Although we recognize that an inequity has existed between those 1977 service academy graduates who were barred from receiving chapter 34 education benefits and those members of the SROTC who received a full scholarship and yet qualified for the noncontributory GI Bill, we do not believe it is appropriate now to amend the basic eligibility requirements for a program which expires at the end of this year. Furthermore, the current Montgomery GI Bill program has set a precedent by precluding service academy graduates from receiving additional educational benefits altogether. For these reasons, we do not support the retroactive expansion of chapter 34 benefits.

Sections 5 and 6 of H.R. 1358 would increase by 5 percent both the rates of subsistence allowances for service-connected disabled veterans participating in rehabilitation programs under chapter 31 of title 38, and of educational assistance allowances for survivors and dependents under chapter 35 of title 38, respectively. The increases would be effective January 1, 1990.

We support the proposed rate increase for these benefits in the context of the overall budget negotiations. These allowances were last increased in 1984, and since then education costs have risen an average of 6 to 7 percent a year. We estimate the increased benefits would cost $5.2 million in Fiscal Year 1990.

Section 7 of the proposal would amend section 1774(a) of title 38 to provide for the use of readjustment benefit account funds to carry out activities in connection with State approving agencies pursuant to section 1774A of that title. This would include, but not be limited to, the development and implementation of a national training curriculum for State approving agency employees.

VA supports this proposal. It would help ensure that State employees would receive appropriate training to develop their employment skills, an intent clearly evinced by Congress in enacting the Public Law 100-323 provision for establishing a national training program. This amendment would clarify our authority to use readjustment benefit funds for the purposes intended.

Section 8 would make various technical and clerical amendments. We believe that these are appropriate and would facilitate program administration. Therefore, we support such amendments.

We estimate that, with the exception of sections 5 and 6, enactment of H.R. 1358 would result in insignificant benefit costs (i.e., less than $1 million) and insignificant administrative costs (i.e., less than $100,000) for Fiscal Year 1990 and for each of the first 5 fiscal years.

With regard to sections 5 and 6, we estimate that the 5 percent rate increases for chapter 31 subsistence and chapter 35 survivors' and dependents' educational assistance allowances would result in benefit costs of $5.2 million for Fiscal Year 1990, and $33 million for the first 5 fiscal years.

Enclosed is a detailed 5-year cost estimate for H.R. 1358, including, where appropriate, the assumptions and methodology used in arriving at this estimate.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on H.R. 1358 to the Congress.

Sincerely yours,

Edward J. Derwinski

Enclosure

COST ESTIMATE, H.R. 1358, 101st Congress

1. This bill would amend title 38, United States Code, with respect to the Montgomery GI Bill.

2. Section 1 would provide that a new 10-year delimiting date can only begin following a period of active duty of at least 90 days and that certain veterans who are described in section 1652(a)(1)(B) would not have their 10-year delimiting period for using chapter 30 benefits reduced by any period in 1977 before such veterans began serving on active duty. We believe that these corrective amendments would impact on a minimal number of veterans. Therefore, the estimated cost of these changes is insignificant; i.e., less than $1 million in any fiscal year.

3. Section 2 of the bill would prohibit an individual who served in the Selected Reserve from receiving credit for such service under chapter 32 of title 38, United States Code, and chapter 106 of title 10, United States Code. Currently, there is no statutory bar against establishing dual entitlement for benefits under these two programs. However, it is believed that the number of veterans eligible for benefits under both programs is small. Because chapter 32 is funded by individual veteran and Department of Defense (DOD) contributions and because chapter 106 is funded fully by DOD, there would be no cost to VA as a result of this amendment. If the veteran chose to disenroll from chapter 32, there would be obligations incurred in that program as a result of refunding veterans' contributions to the program. However, because of the limited number of persons impacted, these obligations are expected to be minimal; i.e., less than $1 million.

4. Section 3 would allow that the requirement of a secondary school diploma for purposes of eligibility for chapter 30 education benefits would be met if a person had successfully completed the equivalent of 12 semester hours before the end of the individual's initial obligated period of active duty. It is believed that there are few individuals who would have at least 12 semester hours of postsecondary education and not already have a secondary school diploma or its equivalency. Therefore, the additional cost of this proposed amendment is expected to be insignificant; i.e., less than $1 million in any fiscal year.

5. Section 4 provides that certain graduates of the military academies and members of the Senior Reserve Officers Training Corps (SROTC) would be eligible for benefits under chapter 34 of title 38, United States Code. However, they must make an irrevocable election for chapter 34 benefits prior to January 1, 1990, and, if enrolled in the chapter 32 program, must disenroll from that program. The unused portion of their contribution to

the chapter 32 program would be refunded to them. In addition, if they received benefits under chapter 32, they would be entitled to the difference between their chapter 32 payments and the chapter 34 payment rate. It is unlikely that a significant number of 1977 or 1978 service academy or SROTC graduates would have enrolled in the chapter 32 program since all of these individuals already would have obtained a baccalaureate degree. Participation in a contributory program such as chapter 32 would not seem to be a particularly attractive option for individuals who had already attained that education level. Therefore, the cost of granting chapter 34 benefits to certain academy and SROTC graduates is expected to be less than $1 million in any fiscal year.

6. Sections 5 and 6 of this proposal would respectively increase the rates for chapter 31 subsistence allowance and chapter 35 survivors' and dependents' educational/training assistance allowance. The proposed increase is 5 percent, and the cost of the increase is shown below:

Fiscal Year	Cost ($ thousands)
1990	$ 5,200
1991	7,400
1992	7,100
1993	6,800
1994	6,500
	$33,000

7. Section 7 of this bill clarifies that the funding for the development of a national training curriculum for State approving agencies can come from funds available to the State approving agencies under section 1774 of title 38, United States Code. Under section 1774, there is a $12 million annual limitation for reimbursement of State approving agency activities. Therefore, this proposal would have minimal impact on the Readjustment Benefits appropriation since the funds are limited. If the combined total of reimbursement for section 1774 State approving agency activities and funding of the national training curriculum exceeded the $12 million limitation, then each State approving agency would receive the same percentage of $12 million, less the amount of national training curriculum expenditures, as the agency would have received of the total amount which would have been available without the $12 million limitation.

8. Section 8 of the bill contains various amendments of a technical nature. The majority of these would either clarify and confirm existing administrative interpretation or correct certain statutory cross-references and citations, and, thus, would have

3.

no budgetary impact. However, subsections 7 and 8 of this section are more substantive.

9. Subsection 7 of section 8 of the proposal would amend section 1417(a)(1)(A)(ii) of title 38, United States Code, by allowing the payment of chapter 30 death benefits to survivors of veterans who were in their initial obligated period of active duty and participated in the chapter 30 program but died while on active duty before completing the requirement for a secondary school diploma (or equivalency certificate). In costing the original provision to provide death benefits for the survivors of chapter 30 participants (House's substitute to S. 2049), it was found that fewer than 800 chapter 30 participants in any year could be anticipated to die, thus resulting in a cost estimate of less than $1 million in any year for that provision. The number of those who would die without having met the secondary school requirements would be significantly less than 800. Therefore, we estimate the cost of this provision to be less than $1 million in benefit costs and $100,000 in administrative expenses in any fiscal year.

10. Subsection 8 of section 8, in paragraphs (A) and (B), would amend sections 1411(a)(1)(B) and 1412(a)(1)(B) of title 38, United States Code. Currently, under those title 38 sections, individuals who have chapter 34 entitlement on December 31, 1989, were on active duty on October 19, 1984, had no break in service since October 19, 1984, and completed at least 3 years of continuous active duty (or 2 years of continuous active duty and 4 years in the Selected Reserve) after June 30, 1985, are eligible for chapter 30 benefits. This proposal would change the date on which the individual must be on active duty for such eligibility purposes from October 19, 1984, to July 1, 1985. Individuals who currently meet the eligibility requirement under these sections would continue to meet the requirements under the proposed change. However, the change would grant chapter 30 eligibility to individuals who were not in service on October 19, 1984, but were on active duty on July 1, 1985, and met the other requirements of either of the sections. There is no way to determine the number of additional veterans that gain eligibility to chapter 30 as a result of the proposed changes. However, it is assumed that the number would be minimal. Therefore, the cost of granting benefits to individuals who would gain eligibility as a result of the changes to chapter 30 is estimated to be insignificant; i.e., less than $1 million in benefits cost and $100,000 in administrative cost.

11. In addition, subsection 8(C) of section 8 of this bill would amend section 1431(e) of title 38, United States Code, to reduce the 10-year delimiting period for veterans eligible for chapter 30 benefits under sections 1411(a)(1)(B) or 1412(a)(1)(B) by the

amount of time that such individuals were not serving on active duty between January 1, 1977, and June 30, 1985. Currently, individuals who meet the section 1411(a)(1)(B) or 1412(a)(1)(B) requirements may not have had a break in service between October 19, 1984, and June 30, 1985; therefore, there would be no change in their delimiting dates. For individuals who gain chapter 30 entitlement as a result of the proposed changes, their delimiting periods would be reduced by the amount of time they were not on active duty between October 18, 1984, and June 30, 1985. It is assumed that a minimal number of persons (less than 100) would be so affected. Therefore, the savings that would be realized as a result of reducing the time limitation for use of entitlement would be insignificant; i.e., less than $1 million. The administrative cost of implementing this provision would also be insignificant; i.e., less than $100,000 in any fiscal year.

12. In sum, the only sections of this bill having significant cost are sections 5 and 6 which provide for a 5 percent increase in allowances for persons eligible under chapters 31 and 35. Since the cost of a 5 percent increase is included in the Administration's 1990 Budget, no separate methodology is being provided here.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

APR 2[illegible] 1990

The Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20515

Dear Mr. Chairman:

We are pleased to respond to your request for a report on S. 2100, 101st Congress, a bill to increase the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-disabled veterans, and for other purposes.

We share many of the objectives of this legislation and strongly favor some of its provisions, but there are provisions in the bill which VA opposes. The accompanying report specifically states our positions, the rationales on which they are based and estimates of costs on each of the provisions of S. 2100.

For example, we favor the increase in disability compensation and dependency and indemnity compensation based on the Social Security-Consumer Price Index (CPI) adjustment for 1990. VA would go further and expand this one-time adjustment to an automatic CPI adjustment of these benefits paid to our most deserving clients. Such an automatic annual increase for veterans and their dependents and survivors would assure a fair and expeditious protection against the effects of inflation on their lives. Other parts of this bill would make desirable improvements in coverage of radiation exposed veterans, the availability of mobile health care clinics and prosthetic devices, and would increase the coverage of service disabled veterans life insurance. We also strongly support the proposed increase of Veterans Mortgage Life Insurance coverage to $90,000.

However, we strongly oppose section 402(b) of the bill, dealing with transitional housing for veterans recovering from substance abuse disabilities. Although the proposal's objective is laudable, it would not be effective, and it would duplicate similar programs now operating in 31 states. We particularly object to the use of the Canteen Service revolving fund to finance this proposal. We see no basis for asking patients and employees in VA medical centers to fund, through purchases at VA Canteens, a new program, the need for which is yet to be established.

We estimate the cost of S. 2100 to be $376.4 million for Fiscal Year 1991 and $2.2 billion for the first five years.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2100 to the Congress.

Sincerely yours,

Edward J. Derwinski

Enclosures
EJD/bb

REPORT ON S. 2100

TITLE I, COMPENSATION.

DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION RATE INCREASE

VA supports Section 101 which would provide for a one-time increase in disability compensation and dependency and indemnity compensation (DIC) effective December 1, 1990. The increase would be at the same rate authorized for Social Security recipients under 42 U.S.C. § 415, and would be based on the Consumer Price Index (CPI). Section 101 is consistent with VA's long-standing position that veterans' service-connected benefits should not be allowed to erode because of inflation. Since 1979, automatic adjustments in a limited area of VA benefits have been provided under 38 U.S.C. § 3112 (for nonservice-connected disability and death pensions and DIC for dependent parents) also based on cost-of-living increases in Social Security. However, increases for service-connected disability programs under chapter 13 of title 38 have not been automatic but accomplished only by the enactment of separate annual public laws, the last being Pub. L. No. 101-237 which became effective December 1, 1989. Since 1973, Congress has found it necessary to act each year (during one year, twice) often resulting in cost-of-living (COLA) delays such as occurred in 1989.

VA believes permanently tying compensation and DIC rates to the CPI would remove rate increases from the political arena as well as avoid the delays, pressures and complexity of the annual budget process. This change would assure fair and timely benefit adjustments to veterans and their survivors. VA submitted to Congress, during the first session of the 101st Congress, a bill to accomplish this objective, S. 613, now pending before the Senate Committee on Veterans' Affairs. VA suggests that S. 2100 is appropriate legislation in which to include this long needed change in annual benefit rate recomputation.

The cost estimates which follow are based on the 3.9 percent COLA estimated for Fiscal Year (FY) 1991 and the projected changes in the CPI for fiscal years 1991 through 1995. The estimated 5-year cost of section 101 of Title I is as follows:

	($ in thousands)
1991	$ 371,300
1992	443,900
1993	442,400
1994	437,700
1995	441,000
Total five year	$ 2,136,300

2.

EXTENSION OF PRESUMPTION OF SERVICE CONNECTION FOR CERTAIN RADIATION EXPOSED RESERVISTS

VA supports section 102 which would amend 38 U.S.C. § 312(c) to add two new categories of persons who participated in radiation-risk activities but who were perhaps inadvertantly excluded when Congress enacted Pub. L. No. 100-321, 102 Stat. 485, "The Radiation-Exposed Veterans Compensation Act of 1988." The present language of section 312(c) makes clear only persons exposed to radiation while on "active duty" are eligible for presumptive service connection under 38 U.S.C. § 312(c). "Active duty" is defined in 38 U.S.C. § 101(21) as "full time duty in the Armed Forces, other than active duty for training." Section 102 will add to coverage of section 312(c) those who were exposed to radiation while "on active duty for training" and "on inactive duty for training." We agree with this expansion of coverage to all veterans who were actually exposed to radiation risks, including reservists who were not technically "on active duty."

We estimate that enactment of section 102 would result in insignificant benefit and administrative costs, i.e., less than $1 million in benefit costs and $100,000 in administrative costs.

AUTHORITY TO MAKE READJUSTMENTS IN THE DISABILITY RATING SCHEDULE PROSPECTIVE ONLY

VA strongly favors section 103 which will permit the Secretary to provide that adjustments in the disability rating schedule will not result in reducing any individual veteran's ratings already in effect. A current general review of the VA rating schedule is now underway, and undoubtedly, changes in the descriptions of various levels of disability can be expected. There is strong precedent for section 103. Congress expressly provided for the protection of existing individual disability compensation awards granted under the 1925 Rating Schedule, and again in 1945, when the current rating schedule was adopted.

TITLE II, HEALTH CARE.

MOBILE HEALTH CARE CLINICS

Section 201 would amend section 113 of Pub. L. No. 100-322 to extend for one year VA's authority to conduct a pilot program under which VA furnishes health-care benefits to veterans living in rural areas through use of a mobile health-care unit. It would also permit any funds appropriated for the pilot program to remain available until they are expended.

Congress initially authorized the pilot as a two-year program to begin in Fiscal Year 1989, but directed that the program be carried out only if funds were specifically appropriated for that purpose. No funds were appropriated for the program for fiscal year 1989, but $3 million was appropriated for fiscal year 1990. VA is now in the initial stages of implementing the program. By extending the authority for one year, this bill would permit VA to carry out the intent of the original legislation.

VA supports the extension of the pilot program for one year. We object, however, to the authority to allow funds for this project to remain available until expended. This program is funded by the Medical Care appropriation which is available for one year. There is no justification for exempting this pilot program from the budgetary discipline that applies to all other VA medical programs.

PROSTHETIC DEVICES TO OBVIATE THE NEED FOR HOSPITAL CARE

Section 202 would amend 38 U.S.C. § 601(6) to permit VA to furnish nonservice-connected veterans with wheelchairs, prosthetic devices, medical equipment, and similar appliances when furnishing outpatient care to obviate the need for hospital care. Under existing law, such devices and equipment can be furnished to veterans receiving post-hospital outpatient care, but specific statutory language, which this provision would delete, precludes furnishing it on an "obviate" basis. Being cognizant of the argument that it would be cost-effective to furnish devices if it would obviate the need for more costly hospital care, VA is considering proposing legislation similar to this. The Department, however, does not endorse the proposal at this time.

We estimate the proposal would result in an insignificant increase in the cost of providing medical equipment and prosthetic services, and that would be offset by savings from reduced hospital admissions.

4.

HOME IMPROVEMENTS AND STRUCTURAL ALTERATIONS BENEFIT INCREASE

Section 203 would amend 38 U.S.C. § 617(a) to increase the maximum amount of the grants VA makes to eligible veterans for home improvements and structural alterations necessary for treatment in the home, or to allow the veteran access to the home or to essential lavatory and sanitary facilities.

The grant amounts provided for in the statute are the maximum any veteran may receive in his or her lifetime. The grants are typically used for such things as widening doors to allow wheelchair access, building wheelchair ramps and installing grab bars in a lavatory.

This provision would increase the maximum lifetime benefit for nonservice-connected veterans from $600 to $1200, and for service-connected veterans from $2,500 to $5,000. We recognize that this benefit has not been increased for a substantial period of time, but we are unaware of evidence that the existing maximum amounts are insufficient to meet the needs of eligible veterans. We will seek the advice of our medical centers which furnish the benefit and will consider proposing an increase if that is warranted. We cannot at this time support this proposal which would simply double the amount of the benefit.

VA estimates that enactment of section 203 will cost $1.7 million in fiscal year 1991, and $9.2 million over five fiscal years. (See Exhibit "F" attached hereto).

TITLE III, INSURANCE.

SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS

Section 301 of the bill would establish a supplemental insurance program for totally disabled veterans who have basic Service Disabled Veterans Insurance (SDVI) and who, otherwise, meet the eligibility requirements for the supplemental coverage. Under this proposal, up to $10,000 in supplemental coverage would be available to those SDVI policyholders who qualify for a waiver of premiums on their basic policy. The supplemental coverage would be issued under the same terms and conditions as the basic coverage, except that the premiums on the supplemental coverage could not be waived. Eligible individuals would be entitled to select any plan of insurance or any amount up to $10,000, regardless of the plan or amount of coverage held under the basic policy.

Section 722A(b) provides that application for the supplemental coverage must be made within one year of the date service connection is granted for a disability. Anyone who becomes totally disabled after that initial one year period will not be eligible for the supplemental coverage unless he or she is service connected for a new disability. If the intent was to give an otherwise eligible individual one year from the date he or she is granted waiver on the basic SDVI policy in which to apply for the supplemental coverage, that intent would not be met by the current language of section 301 and we suggest it be changed to remove this ambiguity.

One further clarification is needed in section 301. From the overall language of this proposal, the availability of supplemental coverage appears to be limited to individuals granted basic SDVI coverage under the provisions of 38 U.S.C. § 722(a). It is possible, however that 722A could be interpreted so as to include individuals granted gratuitous insurance under section 722(b). We believe that if this is not intended it should be so stated clearly.

VA supports these changes with appropriate clarifying amendments as suggested.

Since the SDVI program is not self supporting an increase in coverage will require additional congressional subsidies. Unfunded liability would also increase from $360 million to $380 million (See Exhibits A through C attached hereto). The total five-year estimated increase in appropriations to cover this subsidy, together with administrative costs over and above the projected premium income, is based on an assumption of an average age of 50 for those obtaining additional coverage and an election by 10,000 insureds to purchase the additional $10,000 coverage. The total five-year estimated cost increase under section 301 is as follows:

	($ in thousands)
1991	$ 1,666
1992	1,493
1993	1,305
1994	1,103
1995	882
Total five-year	$ 6,449

INCREASE IN AMOUNT OF VETERANS MORTGAGE LIFE INSURANCE

VA endorses Section 302 which would increase the maximum amount of coverage available under the Veterans Mortgage Life Insurance (VMLI) program from $40,000 to $90,000. Those eligible for such coverage are principally service-connected quadriplegics, paraplegics and others whose service-connected disability requires the use of a wheelchair. Housing costs have risen substantially during the past 13 years since the maximum amount of insurance was increased from $30,000 to $40,000. Based on figures made available last September, during this 13 year period, the U.S. Department of Commerce estimates that the average cost of housing increased from $48,000 to $138,000 or 188%. When the maximum coverage of VMLI was increased to $40,000 in 1976, that increase was supported on the basis of a 43% increase in the average cost of housing which had occurred during the 6 year period that had elapsed from the passage of the initial legislation. This is a much needed increase which has our full support.

The total five-year estimated increase in congressional appropriations required to meet the VLMI program obligations and administrative expenses under section 302 is as follows (See Exhibits "D" and "E" attached hereto):

($ in thousands)		
1991	$	1,686
1992		1,831
1993		1,964
1994		2,089
1995		2,204
Total five-year	$	9,774

TITLE IV, MISCELLANEOUS.

POSTPONEMENT OF TIME LIMITATION ON COUNTING VIETNAM-ERA VETERANS IN DISABLED VETERANS OUTREACH PROGRAM SPECIALISTS FUNDING FORMULA

Section 401 would postpone the current time limitation on including Vietnam-era veterans under the Disabled Veterans Outreach Programs (DVOP), chapter 41 of title 38, by two years to December 31, 1993. VA defers to the Department of Labor on this matter.

DISCOUNT SALES OF VA PROPERTIES FOR USE BY THE HOMELESS AND BY RECOVERING SUBSTANCE ABUSERS

Section 402(a) would amend section 9 of Pub. L. No. 100-198 (38 U.S.C. § 1820 note) to extend for three years VA's authority to sell at a discount certain properties it acquires through defaults on loans made or guaranteed by the Department, to public and nonprofit entities who will use the property to assist homeless veterans. It would also expand the authority to allow discount sales of the same properties to nonprofit entities for use as transitional housing for veterans recovering from substance abuse disabilities. VA supports the extension of authority to allow the discount sales to organizations providing shelter to homeless veterans. Although we don't object in principle to the concept of selling such properties for use as transitional residences for recovering substance abusers, we question the need for the expanded authority. Congress, in 1987, authorized VA to discount and sell VA-owned (foreclosed) properties to State and local agencies and certain nonprofit organizations working on behalf of homeless persons. In the two years since enactment of Pub. L. No. 100-198, few organizations have seriously sought to reap its benefits, and VA actually sold only two properties. However, in an effort to increase use of the authority, VA has recently increased the amount of the discount it will give on properties, and has increased the number of facilities available for discount sales. This bill's three year extension of authority would allow VA to better determine the viability of the program.

The bill's expansion of the discount sales authority to allow sales to organizations which will operate transitional residences for veterans recovering from substance abuse appears intended to foster formation of houses based on the "Oxford House" model. As we understand it, however, Oxford Houses are ordinarily leased, not purchased. Oxford Houses and the "transitional residences" which section 402(b) of this bill would help fund through a loan program, are discussed extensively below. We have a number of serious questions about the loan program and the transitional homes they would fund, and until those questions are resolved, we cannot support expansion of the discount sales program.

TRANSITIONAL HOUSING FOR VETERANS RECOVERING FROM SUBSTANCE ABUSE

Section 402(b) would amend 38 U.S.C. § 620A to establish a revolving fund from which VA would make loans to nonprofit entities to assist in establishing "transitional residences" for veterans recovering from substance abuse. Loans of up to $4000 could be made to nonprofit entities if they agree to operate a residence for six or more recovering veterans, and if the residence: prohibits the use of alcohol or drugs in the residence; expels residents who violate that prohibition; requires the residents to meet the costs of maintaining the residence; and is democratically governed by the residents. The bill would require that loans be repaid within two years through monthly payments, call for penalties for failure to make timely payment, and permit the Secretary to contract for collection of loan payments due the VA. The bill would require that the new revolving fund be funded initially with

$100,000 transferred from the VA's Canteen Service revolving fund, and would authorize the Secretary to transfer additional amounts up to a total of $900,000, if needed. The bill would require the Secretary to issue guidelines for operation of residences within 90 days of enactment. VA opposes enactment of section 402(b).

VA recognizes the successes achieved through group homes for those recovering from alcohol or drug dependence. So-called "Oxford Houses" represent such a model: facilities in which a group of recovering substance abusers live together communally, furnishing each other a supportive environment free of alcohol and/or drugs. A subcommittee of the House Veterans' Affairs Committee recently heard testimony on this model; the hearing record reflects that some 76 Oxford Houses are currently located throughout the country which were generally formed without any government assistance. Once a group forms a residence, they can seek a "charter" from the umbrella Oxford House organization, but the actual facilities are autonomous and financially self-supporting. Also, while Oxford Houses may serve as transitional residences, they are, in the majority of cases, a permanent residence for the recovering individual.

In seeking to adapt this concept into a federally supported program, proponents would effectively require that VA establish an apparatus conceivably more costly to administer than the amounts it might have available to lend, and in doing so would inappropriately tap an altogether unrelated VA fund. The bill calls for much more than what superficially appears to be a very small loan program. VA would, for example, be responsible for determining that all persons living in a transitional residence are veterans discharged from a VA drug or alcohol abuse treatment program, and presumably would have to monitor houses to make sure that only veterans continue living there. Responsible program management would dictate that VA ascertain the creditworthiness of a loan applicant, and if loans were not repaid, undertake collection efforts. Responsible administration would also require that VA inspect facilities for safety, and monitor them thereafter. VA would also, presumably, have to monitor houses to make certain they remain "transitional" residences and not permanent homes for veterans. The bill would not fund any of these activities, and thus funds would be taken from other VA programs to support this new undertaking.

We are aware that section 2036 of Pub. L. No. 100-690, the Anti-Drug Abuse Act of 1988, contains provisions fostering the formation by States of revolving funds to make loans up to

$4,000 to assist individuals in forming "Oxford Houses." Section 402(b) would appear to replicate the primary elements of this State-administered program. We understand that some 31 states have established such revolving funds.

In our view, VA resources are best devoted to the maintenance of ongoing, and development of new, treatment programs. In fact, the President's 1991 Budget includes a requested increase of $30 million for these substance abuse treatment efforts. VA medical center personnel, such as social workers and those involved with treatment of substance abuse, can be most effective in this regard by attempting to refer recovering veterans into that already established program. To create a nearly identical program would appear to be an inefficient, costly duplication of effort.

Finally, VA strongly opposes transferring money from the Canteen Service revolving fund to provide monies needed for a new revolving fund. The Canteen Service revolving fund pays Canteen Service employees' salaries, purchases the stock the service sells, provides the means to buy needed equipment and supplies, and is the only source available to modernize canteen facilities. It is altogether inappropriate to ask VA patients and employees in VA medical centers who patronize VA canteens, or Canteen Service employees, to fund a new program.

PERMANENT EXTENSION OF FINANCIAL INFORMATION AND COUNSELING ASSISTANCE FOR CERTAIN VETERANS WITH GUARANTEED LOANS

Section 403 makes permanent the requirement that VA provide financial information and counseling for veterans reported to the VA to be in default on their home loans. VA supports this change.

TECHNICAL CORRECTIONS

Section 404 (a) makes technical corrections.

EDUCATION PROGRAMS

Section 404(b)(1) amends the secondary school diploma requirement under chapter 30 allowing certain active duty personnel to meet their secondary school diploma requirements by successfully completing twelve semester hours in an educational program leading to a standard college degree. This amendment is consistent with the change made by Pub. L. No. 101-237 which allowed the same liberalization for all other chapter 30 participants. VA supports this change.

NATIONAL GUARD

Section 404(b)(2) updates the citation to chapter 109 of title 10. Section 404(b)(3) would amend work study requirements for chapter 106 recipients to include work at National Guard facilities in addition to Defense Department facilities. VA supports these amendments.

HOME LOAN PROGRAM

Section 404(c) makes various technical amendments, which VA supports, to Pub. L. No. 101-237. First, it clarifies that loans over $144,000 made for purposes other than construction or purchase (cash out refinancing loans) are guaranteed up to $36,000. Second, interest rate reduction loans over $144,000 may be guaranteed for up to $46,000 to take advantage of VA rate reduction loans if interest rates fall. Third, this subsection would correct an apparent drafting error in Pub. L. 101-237 regarding the Government credit to the new Guaranty and Indemnity Fund. In the case where the veteran makes a downpayment of 10 percent or more, the government contribution would be limited to total of 0.5 percent (0.25 percent for each of 2 years), rather than such 0.5 percent credit in addition to a credit of 0.75 percent (0.25 percent per year for 3 years) made on all other loans.

Finally, this subsection would affirm actions taken by the Secretary in collecting the former loan fee of 1 percent between December 1, 1989 (the expiration of the authority to collect such fee under Pub. L. No. 101-110) and the date of enactment of Pub. L. No. 101-237.

MISCELLANEOUS

Section 404 (d) makes several name changes to conform with current law.

It is estimated there will be no significant costs resulting from sections 403 and 404.

Report on S. 2100 - Exhibit "A":

SECTION 301, SUPPLEMENTAL SERVICE DISABLED VETERANS' INSURANCE FOR TOTALLY DISABLED VETERANS

OPTIONAL COVERAGE OF $10,000 - The base coverage would continue to have waiver of premium privilege but the optional coverage would not. Eligibility is limited to those holding a current SDVI policy who qualify for waiver because of total disability. Coverage must be applied for prior to the insured's 65th birthday. A one-year open enrollment period would be held for current SDVI policyholders. Those who become eligible in the future are also considered. The current premium rate scale would be charged for supplemental coverage, which will be provided under the five-year term plan of insurance.

Assume an average issue age of 50 for those obtaining more coverage. Assume 10,000 insureds elect to purchase $10,000 in additional coverage. Projected financial results for the additional coverage are as follows:

	PREMIUM INCOME	DEATH CLAIMS	SUBSIDY REQUIRED
FY 91	$1,414,000	$3,080,000	$1,666,000
FY 92	1,343,000	2,836,000	1,493,000
FY 93	1,276,000	2,581,000	1,305,000
FY 94	1,212,000	2,315,000	1,103,000
FY 95	1,152,000	2,034,000	882,000

Total subsidies for the SDVI program would then be as follows:

	CURRENT SUBSIDY $10,000	SUBSIDY FOR ADDITIONAL COVERAGE	TOTAL SUBSIDY
FY 91	$12,400,000	$1,666,000	$14,066,000
FY 92	14,730,000	1,493,000	16,223,000
FY 93	17,000,000	1,305,000	18,305,000
FY 94	19,190,000	1,103,000	20,293,000
FY 95	21,300,000	882,000	22,182,000

The unfunded liability would increase from $360 million currently to approximately $380 million.

S. 2100 - Exhibit "B":

OPTIONAL COVERAGE OF $10,000 - The base coverage would continue to have waiver of premium privilege but the optional coverage would not. Eligibility is limited to those holding a current SDVI policy who qualify for waiver because of total disability. Coverage must be applied for prior to the insured's 65th birthday. A one-year open enrollment period would be held for current SDVI policyholders. Those who become eligible in the future are also considered. The current premium rate scale would be charged for supplemental coverage, which will be provided under the five-year term plan of insurance.

Assume an average issue age of 50 for those obtaining more coverage. Assume 12,000 insureds elect to purchase $10,000 in additional coverage. Projected financial results for the additional coverage are as follows:

	PREMIUM INCOME	DEATH CLAIMS	SUBSIDY REQUIRED
FY 91	$1,697,000	$3,696,000	$1,999,000
FY 92	1,612,000	3,404,000	1,792,000
FY 93	1,531,000	3,097,000	1,566,000
FY 94	1,454,000	2,778,000	1,324,000
FY 95	1,381,000	2,441,000	1,060,000

Total subsidies for the SDVI program would then be as follows:

	CURRENT SUBSIDY $10,000	SUBSIDY FOR ADDITIONAL COVERAGE	TOTAL SUBSIDY
FY 91	$12,400,000	$1,999,000	$14,399,000
FY 92	14,730,000	1,792,000	16,522,000
FY 93	17,000,000	1,566,000	18,566,000
FY 94	19,190,000	1,324,000	20,514,000
FY 95	21,300,000	1,060,000	22,360,000

The unfunded liability would increase from $360 million currently to approximately $385 million.

Report on S. 2100, Exhibit "C", Page 1:
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SUPPLEMENTARY COVERAGE FOR SDVI POLICYHOLDERS

INITIAL COSTS

I. Supplies

Notification Form Letters	(36,000)	$540	
Applications	(36,000)	540	
Insurance Certificates	(10,000)	400	
Envelopes for:			
Notification Letters & Applications	(36,000)	$478	
Insurance Certificates	(10,000)	120	
Form Design:			
Notification Form Letter	($14.26 @ 3 hrs)	$43	
Application	($14.26 @ 4 hrs)	57	
Insurance Certificate	($14.26 @ 8 hrs)	114	
Pamphlet	($14.26 @ 8 hrs)	114	
Postage:			
Notification Letters & Applications	(36,000)	$8,208	
Insurance Certificates	(10,000)	$2,280	
Total Cost of Supplies			$12,894

II. Processing Applications

10,000	Expected Applications
0.33	Hours/Application
3,333	Total manhours
1.12	% With leave allowance
3,733	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
4,368	Total Manhours with Leave Allowance and Fringe Benefits
8.30	Hourly Rate of VMLI Technician (GS5, Step 4)

Total Application Processing Cost	$36,254

Report on S. 2100, Exhibit "C", Page 2:

III. Ancillary Costs

Answering Inquiries

3,333	Composing Responses to Letters of Inquiry
.16	Hours/Letter
533	Total Manhours
1.12	% With Leave Allowance
597	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
699	Total Manhours With Leave Allowance and Fringe Benefits
8.30	Hourly Rate of Clerk (GS5, Step 4)
$5,801	Total Cost to Answer Written Inquiries

3,333	Typing Responses to Letters of Inquiry
.20	Hours/Letter
667	Total Manhours
1.12	% With Leave Allowance
747	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
874	Total Manhours With Leave Allowance and Fringe Benefits
8.30	Hourly Rate of VMLI Specialist (GS5, Step 4)
$7,251	Total Cost to Type Response to Inquiries

6,667	Answering Phone Calls of Inquiry
.08	Hours/Call
533	Total Manhours
1.12	% With Leave Allowance
597	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
699	Total Manhours With Leave Allowance and Fringe Benefits
8.30	Hourly Rate of VMLI Specialist (GS5, Step 4)
$5,801	Total Cost to Answer Phone Inquiries

Total Ancillary Cost	$18,852
Total Estimated Initial Cost	$68,001 ($6.80/policy)

Report on S. 2100, Exhibit "D", Page 1:

SECTION 302, INCREASE IN AMOUNT OF VETERANS' MORTGAGE LIFE INSURANCE COVERAGE TO $90,000:

TOTAL VMLI SUBSIDY

	MAXIMUM COVERAGE AMOUNT		INCREASE IN VMLI SUBSIDY
	$40,000	$90,000	
FY 1991	$4,608,000	$6,294,000	$1,686,000
FY 1992	$4,772,000	$6,603,000	$1,831,000
FY 1993	$4,840,000	$6,804,000	$1,964,000
FY 1994	$4,904,000	$6,993,000	$2,089,000
FY 1995	$4,965,000	$7,169,000	$2,204,000

Exhibit "D", Page 2:

$40,000 MAXIMUM VMLI COVERAGE

PROJECTED PREMIUMS FOR THOSE WITH MORTGAGES GREATER THAN $40,000

AGE GROUP	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20-29	$ 8,363	$ 9,069	$ 9,723	$ 10,326	$ 10,882
30-39	73,443	79,724	85,551	90,918	95,945
40-49	273,614	297,380	319,361	339,564	358,280
50-59	285,025	309,703	332,529	353,504	373,247
60-69	321,787	348,952	374,025	398,057	419,995
SUBTOTAL	$ 962,232	$1,044,828	$1,121,189	$1,192,369	$1,258,349
ALL OTHER	$ 504,768	$ 439,172	$ 377,811	$ 320,631	$ 267,651
TOTAL VMLI	$1,467,000	$1,484,000	$1,499,000	$1,513,000	$1,526,000

PROJECTED CLAIMS FOR THOSE WITH MORTGAGES GREATER THAN $40,000

AGE GROUP	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20-29	$ 30,878	$ 33,480	$ 35,900	$ 38,130	$ 40,178
30-39	181,328	196,835	211,218	224,472	236,880
40-49	742,328	806,805	866,451	921,258	972,035
50-59	1,009,932	1,097,372	1,178,254	1,252,578	1,322,530
60-69	1,700,778	1,844,349	1,976,878	2,103,882	2,219,844
SUBTOTAL	$3,665,244	$3,978,841	$4,268,701	$4,540,320	$4,791,467
ALL OTHER	$2,409,756	$2,277,159	$2,070,299	$1,876,680	$1,699,533
TOTAL VMLI	$6,075,000	$6,256,000	$6,339,000	$6,417,000	$6,491,000

PROJECTED SUBSIDY FOR THOSE WITH MORTGAGES GREATER THAN $40,000

AGE GROUP	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20-29	$ 22,515	$ 24,411	$ 26,177	$ 27,804	$ 29,296
30-39	107,885	117,111	125,667	133,554	140,935
40-49	468,714	509,425	547,090	581,694	613,755
50-59	724,907	787,669	845,725	899,074	949,283
60-69	1,378,991	1,495,397	1,602,853	1,705,825	1,799,849
SUBTOTAL	$2,703,012	$2,934,013	$3,147,512	$3,347,951	$3,533,118
ALL OTHER	$1,904,988	$1,837,987	$1,692,488	$1,556,049	$1,431,882
TOTAL VMLI	$4,608,000	$4,772,000	$4,840,000	$4,904,00	$4,965,000

S. 2100, Exhibit "D", Page 3:

$90,000 MAXIMUM VMLI COVERAGE

PROJECTED PREMIUMS FOR THOSE WITH MORTGAGES GREATER THAN $40,000

AGE GROUP	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20-29	$ 12,857	$ 13,942	$ 14,950	$ 15,878	$ 16,730
30-39	122,639	133,129	142,855	151,819	160,212
40-49	472,270	513,294	551,240	586,109	618,412
50-59	554,917	602,961	647,404	688,241	726,676
60-69	678,829	736,134	789,031	839,721	886,006
SUBTOTAL	$1,841,512	$1,999,460	$2,145,480	$2,281,768	$2,408,036
ALL OTHER	$ 504,678	$ 439,172	$ 377,811	$ 320,631	$ 267,651
TOTAL VMLI	$2,346,280	$2,438,632	$2,523,291	$2,602,399	$2,675,687

PROJECTED CLAIMS FOR THOSE WITH MORTGAGES GREATER THAN $40,000

AGE GROUP	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20-29	$ 52,489	$ 56,916	$ 61,027	$ 64,822	$ 68,301
30-39	308,255	334,621	359,069	381,602	402,696
40-49	1,261,954	1,371,568	1,472,964	1,566,137	1,652,461
50-59	1,716,885	1,865,534	2,003,032	2,129,382	2,248,302
60-69	2,891,320	3,135,391	3,360,689	3,576,599	3,773,734
SUBTOTAL	$6,320,903	$6,764,030	$7,256,781	$7,718,542	$8,145,494
ALL OTHER	$2,409,756	$2,277,159	$2,070,299	$1,876,680	$1,699,533
TOTAL VMLI	$8,640,659	$9,041,189	$9,327,080	$9,595,222	$9,845,027

PROJECTED SUBSIDY FOR THOSE WITH MORTGAGES GREATER THAN $40,000

AGE GROUP	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20-29	$ 39,632	$ 42,974	$ 46,077	$ 48,944	$ 51,571
30-39	185,616	201,492	216,214	229,783	242,484
40-49	789,684	858,274	921,724	980,028	1,034,049
50-59	1,161,968	1,262,573	1,355,628	1,441,141	1,521,626
60-69	2,212,491	2,399,257	2,571,658	2,736,878	2,887,728
SUBTOTAL	$4,389,391	$4,764,570	$5,111,301	$5,436,774	$5,737,458
ALL OTHER	$1,904,988	$1,837,987	$1,692,488	$1,556,049	$1,431,882
TOTAL VMLI	$6,294,379	$6,602,557	$6,803,789	$6,992,823	$7,169,340

Report on S. 2100, Exhibit "E", Page 1:

INCREASE VMLI COVERAGE FROM $40,000 to $90,000

S. 2100

INITIAL COSTS

I. Supplies

Notification Form Letters	(5,400)	$81	
Applications	(2,500)	50	
Insurance Certificates	(2,500)	100	
Pamphlets	(100,000)	1,000	
Envelopes for:			
Notification Form Letters	(5,400)	$72	
Applications	(2,500)	22	
Insurance Certificates	(2,500)	30	
Form Design:			
Notification Form Letter		22	
Application		28	
Insurance Certificate		28	
Pamphlet		28	
Postage:			
Notification Form Letters	(5,400)	1,231	
Applications	(2,500)	570	
Insurance Certificates	(2,500)	570	
Total Cost of Supplies			$3,832

II. Processing Applications

2,500	Expected Applications
1.25	Hours/Application
3,125	Total Manhours
1.12	% With Leave Allowance
3,500	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
4095	Total Manhours with Leave Allowance and Fringe Benefits
8.30	Hourly Rate of VMLI Technician (GS5, Step 4)

Total Application Processing Cost $33,958

Report on S. 2100, Exhibit "E", Page 2:

III. Ancillary Costs

Answering Inquiries

500	Composing Responses to Letters of Inquiry
.16	Hours/Letter
80	Total Manhours
1.12	% With Leave Allowance
90	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
105	Total Manhours With Leave Allowance and Fringe Benefits
8.30	Hourly Rate of Clerk (GS5, Step 4)
$ 871	Total Cost to Answer Written Inquiries

500	Typing Responses to Letters of Inquiry
.20	Hours/Letter
100	Total Manhours
1.12	% With Leave Allowance
112	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
131	Total Manhours With Leave Allowance and Fringe Benefits
8.30	Hourly Rate of VMLI Specialist (GS5, Step 4)
$1,087	Total Cost to Type Response to Inquiries

1,000	Answering Phone Calls of Inquiry
.08	Hours/Call
80	Total Manhours
1.12	% With Leave Allowance
90	Total Manhours With Leave Allowance
1.17	% Fringe Benefits
105	Total Manhours With Leave Allowance and Fringe Benefits
8.30	Hourly Rate of VMLI Specialist (GS5, Step 4)
$ 871	Total Cost to Answer Phone Inquiries

Total Ancillary Cost	$2,829
Total Estimated Initial Cost	$40,649 ($16/policy)

Report on S. 2100 - Exhibit "F":

COST ESTIMATION WORKSHEET

TITLE NUMBER/NAME: Senate Bill 2100, "Veterans Compensation Cost-of-Living Adjustment Act of 1990"

SECTION NUMBER/NAME: Section 203 - Increase in Maximum Limitations on Home Health Services

I. 5-YEAR COST ESTIMATION:

	FY91	FY92	FY93	FY94	FY95	TOTAL
A. DOLLAR AMOUNT: (Thousands)	1,678	1,753	1,832	1,914.5	2,000.5	9,178
B. FTEE:	0	0	0	0	0	0

C. WORKLOAD: (Applications) Anticipate no increase in the numbers of applications as a result of this Bill.

II. ASSUMPTION & METHODOLOGY OF COST, FTEE, & WORKLOAD PROJECTION: (Use a new sheet for additional space).

BACKGROUND: Veterans are eligible for HISA (Home Improvement and Structural Alterations) when medically determined to be necessary or appropriate for the effective and economical treatment of: (1) a service-connected disability, (2) a disability incurred or aggravated in the line of duty. Cost limitations of $2,500 when required for service-connected disabilities, and $600 when required for nonservice-connected disabilities apply in the aggregate as a one lifetime benefit. Improvements and structural alterations chargeable against the veterans cost limitation include, but are not restricted to: construction of permanent wheelchair ramps; widening doorways for wheelchair access; lowering kitchen or bathroom counters/sinks; improving otherwise inaccessible entrance paths and driveways.

COST: According to our figures, total program expenditures for HISA were $1,769,506 in FY88 and $1,586,121 in FY89. Data is not available to determine the actual number of SC versus NSC applicants. An informal telephone survey was conducted of select regional offices/medical centers in an effort to determine this variable, the outcome is..60% NSC vs. 40% SC program utilization.

METHODOLOGY: This bill proposes to double the existing cost limitation benefit for both SC and NSC beneficiaries to $5,000 and $1,200 respectively. Simply doubling the average FY88/89 HISA program expenditure figures, dissregarding the SC/NSC variable (expect to remain constant), is sufficient to project future program expenditures for HISA. Add a 4.5% annual inflation rate figure to arrive at incremental amount.

FTEE/WORKLOAD: We anticipate no additional workload or FTEE to administer the HISA program as a result of this Bill.

III. NAME OF RESPONSIBLE SERVICE/PROGRAM: Medical Administration Service **TELEPHONE:** 233-3187

STAFF CONTACT PERSON: Stuart E. Mount, MAS Program Specialist **DATE:** March 6, 1990

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUN 1 1990

The Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am pleased to respond to your request for the views of the Department of Veterans Affairs (VA) and our estimate of costs concerning S. 2537, a bill "To amend chapter 32 of title 38, United States Code, to authorize the pursuit of flight training under that chapter."

As Mr. Raymond H. Avent, Deputy Chief Benefits Director for Field Operations, stated when he testified on the subject bill before your Committee on May 11, 1990, VA is opposed to the addition of vocational flight training under chapter 32. Our objection is based on our administrative experience and the well-documented history of the flight training program under the Vietnam Era GI Bill (chapter 34) which reflected that the training did not lead to jobs for the majority of trainees and the courses tended to serve avocational, recreational and/or personal enrichment goals rather than basic employment objectives.

Congress clearly was mindful of such prior GI Bill history when it recently established a 4-year test program of flight training assistance under the Montgomery GI Bill (MGIB), with somewhat more restrictive provisions than under the predecessor chapter 34 GI Bill program (section 422 of Public Law 101-237). We think it particularly imprudent to expand the availability of flight training to the chapter 32 program, as would S. 2537, when the pursuit of such training has yet to be evaluated under the MGIB.

Further, vocational flight training plainly is expensive. Obtaining a commercial pilots license would cost more than the total entitlement for an individual who contributed to chapter 32 and is entitled to matching funds (twice the participant's contributions). A veteran's total entitlement would be exhausted before he or she had sufficient time to complete just that one phase of training. This would result in a substantial number of veterans not realizing their employment objectives.

For these reasons, we oppose enactment of S. 2537.

We estimate that enactment of S. 2537 would result in benefits cost of less than $1 million in any fiscal year. Presumably, most current chapter 32 participants would have had an educational objective in mind when they began contributing to the program. We believe it highly unlikely that those now pursuing or contemplating pursuit of such objectives would suddenly deviate from their established goals in order to pursue flight training. In view of this, and considering that the expense of attaining a flight objective would be disproportionate to the benefits available in many cases, we would not anticipate that there would be significant additional benefits usage associated with enactment of this bill.

Finally, we estimate that enactment of this bill would result in administrative costs of less than $100,000 in any fiscal year.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2537 to the Congress.

Sincerely yours,

Edward J. Derwinski

EJD/bs

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUN 1 1990

The Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

This will respond to your request for VA comments on S. 2542, 101st Congress, 2nd Session, a bill "[t]o amend title 38, United States Code, to establish a program to provide post-secondary educational assistance under the Reserve GI Bill Program in return for agreement for subsequent service with the Department of Veterans Affairs."

VA recognizes the value of recruiting and retaining qualified health care workers, and needs cost-effective methods of doing so. Currently, chapter 76 of title 38 authorizes educational assistance in the form of a Scholarship Program for students enrolled in courses leading to a degree in certain health professions and a Tuition Reimbursement Program for enrollees in nursing degree programs. The VA views both the Scholarship and Tuition Reimbursement Programs as useful recruitment and retention tools.

The VA favors S. 2542 as another useful tool that would enable us to meet our statutory mission of providing health care to eligible veterans by attracting qualified individuals trained in health professions involving direct patient care or care incident to direct patient care. The bill would complement the programs currently existing under the Educational Assistance Program, expanding the scope of the VA's recruitment field and allowing it to draw from an additional pool of applicants consisting of those individuals now eligible for assistance under the Montgomery GI Bill Selected Reserve Program, currently administered by the Department of Defense (chapter 106 of title 10, United States Code). VA would, in at least some cases where the more expensive scholarship program benefits are available, be able under the bill to meet the same staffing needs on a less costly basis. The $400 monthly stipend under the bill amounts to less than half the cost to sustain the typical scholarship recipient in school.

Specifically, S. 2542 would give the Secretary of Veterans Affairs the discretion to provide educational assistance to participants selected from among Reservists eligible for benefits under the Montgomery GI Bill Selected

Reserve Program. The VA-provided assistance would be in the amount of $400 per month to the selected participants during their enrollment in a program of education or training leading to completion of a degree in a health profession involving direct patient care or care incident to direct patient care as determined by the VA. This assistance would be in addition to, and coordinated with, payment of the educational assistance allowance which the participant may receive under chapter 106.

We note that the language of section 4353 providing that the Secretary pay the stipend to selected individuals suggests that such is mandatory. While we recognize that paying a stipend will be a feature of the program for those selected to participate, we suggest that the language reflect the bill's discretionary nature by changing line 5 of page 3 to read that "[t]he Secretary may pay . . . a reserve member stipend . . . of $400 . . . . ," instead of [t]he Secretary shall pay . . . . " (emphases added).

The Reserve Member Stipend Program would be of the same importance as the other VA Educational Assistance Programs. However, the Reserve Program would be distinctive for its potential to improve the VA staffing situation at less than half the cost per participant of another Educational Assistance Program, the Health Professional Scholarship Program.

Under S. 2542, recipients must agree to serve in the full-time clinical practice of their profession as VA employees for a one year period of obligated service for each year of benefits received. Though participants in the Reserve Member Stipend Program would have a commitment to serve the VA, they must still meet the qualifications for employment with the VA, including licensure requirements applicable to their profession.

The VA favors enactment of the bill, in view of its cost-effectiveness, discretionary nature, and potential attractiveness as an effective recruitment tool. Because it would be a discretionary program, the VA could enroll as many or as few participants studying whatever health fields would be deemed necessary to boost recruitment in the VA.

S. 2542 would create a pool of mature, disciplined individuals, committed to at least six years of Reserve service, from which VA could draw to meet its staffing needs. Moreover, by augmenting the benefits available under chapter 106 and expanding the educational opportunities available under that chapter, the bill would create a strong incentive for eligible individuals to enter both the Reserves and the Reserve Member Stipend Program, and to maintain satisfactory performance in both.

In the event of a participant's failure to complete a program of study, or to fulfill an employment obligation, the remedies imposed in title 38, United States Code, sections 4317 and 4334 would apply. Where an individual breaches the agreement by voluntarily terminating study, failing the course, or failing to obtain licensure, then the "triple payback" provisions of section 4317 that are applicable for other Educational Assistance Program participants would be applicable. The VA views the payback provisions as adequate insurance against participants half-heartedly entering the Program. These features demonstrate how the bill is flexible enough to help meet the VA's recruitment and retention needs without exploitation.

The VA recognizes that during a period of Reserve commitment, Program participants who remain Reservists would be subject to mobilization. We concede that the requirements of the Department of Defense would precede those of the VA in the event of mobilization. We therefore do not object to the provision relieving from liability those individuals who are unable to fulfill their service obligation because they are ordered to active duty pursuant to section 2135 of title 10. The VA recognizes the potential implications of this provision with respect to Reservists of the Armed Forces. However, the VA views such a possibility as worthy of the perceived minimal risk.

The VA estimates that the measure, if enacted, would cost $6,260,000 for Fiscal Year 1990 and the next five fiscal years thereafter. This is based on an estimate of 1,000 participants annually in the program, 80 percent for one year, and 20 percent for two years. The cost of funding 1000 participants, 800 for one year and 200 for two years, is estimated at $5,760,000 annually. Administrative costs are estimated at $500,000 annually and include six full-time employee equivalents to administer this program. Based on the assumption that under the bill VA would choose half the selected reserve participants from persons who would otherwise be participants in the VA scholarship program, which costs about $20,000 per year (more than twice as much as the Selected Reserve Program would), the net cost impact of the bill would be neutral.

4.

The Honorable Alan Cranston

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2542 to the Congress.

Sincerely yours,

Edward J. Derwinski

EJD/ksa

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 11 1990

The Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested, we are providing this report on S. 2701, a bill "To amend title 38, United States Code, to improve the capability of the Department of Veterans Affairs to recruit and retain physicians and dentists through increases in, and modifications of, special pay authorities, and for other purposes." In addition, because of interest shown by the Committee, we will be submitting shortly our comments on H.R. 4557, the House Special Pay bill.

VA agrees that the current special pay statute should be amended to provide greater flexibility in setting appropriate amounts, and to authorize generally higher amounts, of certain types of special pay for physicians and dentists employed by the Veterans Health Services and Research Administration (VHS&RA).

We do not, however, support S. 2701. We urge the Committee to report the Administration's physician pay bill, which would provide VA with greater flexibility to accomplish the goals of S. 2701 at $33 million (45%) less annually. The generally lower amounts in VA's proposed legislation are firmly based on the findings in the Quadrennial Report. We forwarded our proposed legislation to the Senate on July 11, 1990. It has now been introduced as S. 2732.

Physicians and dentists special pay has been a critical factor in the VA's ability to attract and retain a qualified medical work force. Within the past decade, however, as documented in the VA's Quadrennial Report to the President on the Adequacy of Special Pay for physicians and dentists (submitted to the House and Senate Committees on Veterans' Affairs and the Office of Management and Budget in October 1989), the VA's special pay system has not kept pace with changing marketplace conditions. There has been no increase in special pay since 1980. As a result, the VA is now facing a crisis in the recruitment and retention of qualified physicians and dentists, particularly with regard to scarce medical specialties and positions of administrative and managerial responsibility.

In some medical specialty areas, VA lags 33 percent or more behind national pay rates. As a result, VA has been forced to rely increasingly on scarce medical specialty contracts to insure availability of certain specialists. These contracts, traditionally more costly than employment as a means of securing medical services, are becoming increasingly more expensive. At the same time, they serve to conceal the real vacancy rate within those specialties. In addition, although VA's physician work force increased by 14 percent from 1981 to 1988, the increase consisted primarily of a large increase in the number of part-time physicians. A higher percentage of part-time physicians means that VHS&RA must hire more physicians to accomplish the same amount of work, at increased personnel costs. This shift to part-time employment is due in large part to declining ability to compete in the recruitment market for well-qualified physicians. This is particularly true for so-called scarce specialties such as radiology, anesthesiology, and special surgery.

In addition, vacancies for senior physician administrators such as Chiefs of Staff have become increasingly more difficult to fill. Part of the problem is a lack of monetary incentive for VA physicians to accept the added responsibility of these senior positions.

Moreover, the increasing necessity of hiring at higher grades in order to remain competitive has led to the problem of pay "compression," virtually eliminating any career ladder for physicians.

As a result, VA has developed proposed legislation which we believe best addresses these problems. Also, the generally lower amounts in VA's proposed legislation are firmly based on the findings in the Quadrennial Report. We forwarded this proposed legislation to the Senate on June 11, 1990.

S. 2701 would re-establish the special pay provisions in a new subchapter II of chapter 73 of title 38, United States Code (existing subchapter II would be redesignated as subchapter III). Like VA's proposed bill, the Senate bill would revise the special pay statute to provide greater flexibility in setting, and would increase, certain types of physician and dentist special pay. Our comments address those features which differ from VA's proposed legislation or from provisions of current law.

A principal difference between S. 2701, and the VA proposal (as well as current law) is that the Senate bill would eliminate primary special pay. Primary special pay guarantees to all eligible physicians and dentists a minimum amount of special pay, irrespective of the individual's entitlement to special pay under any of the "incentive" categories. Instead,

S. 2701, in new sections 4123 and 4125, places all special pay under what are now incentive special pay categories, i.e., full-time status, tenure, scarce specialty, position of responsibility, board certification, and geographic location. In addition, S. 2701 adds a new category "exceptional qualifications." VA believes that most of the current primary special pay should be reallocated to special pay for tenure. However, we also strongly believe some amount of primary special pay remains necessary to ensure adequate and competitive starting salaries. We prefer the VA draft bill's provision for $2,000 primary special pay which achieves this purpose.

New sections 4123 and 4125 in S. 2701 would increase the special pay under the various incentive categories for physicians and dentists, respectively. The increases are more than the VA proposal would provide, substantially more in some categories. We prefer the lower increases we have proposed which sufficiently meet the need for increased special pay. The increased cost of S. 2701 over FY 1988 for special pay would be $72,512,406 in FY 1991 and each of the subsequent years, for a total five-year cost of $362,562,030. FY 1988 is used as the base year for comparing increased costs with previous estimates used in the VA's Quadrennial Report to the President on the Adequacy of Special Pay for Physicians and Dentists. A copy of the cost estimate is enclosed.

With respect to tenure special pay for physicians, S. 2701 would authorize a range of pay for several subcategories:

S. 2701

$4,000 to $6,000 - 2 to 4 yrs
$6,000 to $12,000 - 4 to 8 yrs
$12,000 to $25,000 over 8 yrs

S. 2701 does not specify any criteria for applying these ranges. This tenure special pay would reward continuing tenure with VA. We note, however, that the VA proposal, which we prefer, allows for more frequent pay increases rewarding continuing tenure and limits the maximum tenure pay to $16,500 annually.

Unlike VA's own proposal, section 4123(b)(3) specifies a minimum amount for scarce specialty incentive pay. Thus, it requires a minimum of $4,000, irrespective of need. VA's proposal includes no such minimum and, thus, it affords greater flexibility to meet actual needs and does not arbitrarily force medical facility directors to under- or overcompensate certain scarce specialities (i.e., if a specialty only requires $2,000).

4.

The Honorable Alan Cranston

With respect to special pay based on level of responsibility, S. 2701 departs from current law and VA's proposal and would provide higher amounts of monetary recognition for the Chief Medical Director and the Deputy Chief Medical Director. The Chief Medical Director is now paid at Executive Level III, and the Deputy Chief Medical Director at Executive Level IV. Each receives the maximum special pay of $27,500 per year. VA believes total pay (i.e., basic pay plus special pay) should not exceed the rate of basic pay for Level I of the Executive Schedule (Cabinet Secretaries).

Also, S. 2701 departs from current law and VA's proposal by failing to include Deputy Service Directors. Although some Deputy Service Directors would qualify for position special pay because they are paid at the Executive grade, others who are paid at the Medical Director and Chief grades would not qualify. We prefer the VA proposal.

New sections 4123(b)(7) and 4125(b)(7) would add incentive special pay for "exceptional qualifications" of physicians ($15,000 maximum) and dentists ($5000 maximum), with the personal approval of the Chief Medical Director. This provision was not included in the VA proposal and is not supported by the Department. The proposed increases in pay and expanded flexibility for setting the new pay rates will allow VA to attract and retain qualified physicians and dentists. Thus, special pay for "exceptional qualifications" is unnecessary.

New section 4125(b)(5) of S. 2701 would add authority to pay dentists special pay on the basis of specialty board certification. VA opposes this provision as unnecessary to assure recruitment and retention of dentists. Other elements of special pay, including scarce specialty and geographic area elements, will be sufficient for VA to assure dentist recruitment and retention.

Under S. 2701, part-time physicians and dentists would receive a proportional amount of the full-time rate. In contrast, existing law and the VA proposal provide a proportional amount of statutory part-time rates which are approximately 3/4 of the full-time rate. Furthermore, S. 2701 would authorize special pay for some physicians and dentists employed on a less than one-half time basis. We prefer VA's proposal which we believe is adequate to meet recruitment and retention needs.

Under new section 4127(a)(1), certain physician and dentist managers in VA Central Office receiving special pay on the basis of their Central Office positions would not be eligible for special pay based on scarce specialty. We prefer VA's proposal. We agree that it would be inappropriate to pay scarce specialty pay to physician and dentist managers who are not actually employed as specialists, and that special pay should be paid to them on the basis of their positions. However, there are some problems with the provision. In the first place, it does not apply to all VA Central Office managers, but is limited to Service Directors, Deputy Assistant Chief Medical Directors, Assistant Chief Medical Directors, the Associate Deputy Chief Medical Director, the Deputy Chief Medical Director and the Chief Medical Director. It does not apply to other VA Central Office management officials such as Deputy Service Directors, the Deputy and Assistant Associate Deputy Chief Medical Directors and various staff physicians and dentists. In contrast, VA's proposal applies to more of these positions, but does not contain a blanket prohibition on paying scarce specialty pay to physicians and dentists in VA Central Office. Thus, the VA proposal provides greater flexibility with respect to special pay for these employees. Moreover, this section could serve as a disincentive to those physicians and dentists receiving the maximum scarce specialty pay from accepting VA Central Office management positions. S. 2701 authorizes physician scarce specialty pay as high as $40,000; but, except for the Deputy Chief Medical Director and the Chief Medical Director, this bill authorizes position special pay much less than that amount. Similarly, this bill authorizes dentist scarce specialty pay as high as $20,000; but position pay is much less than that amount.

We note that S. 2701, consistent with VA's proposal, would discontinue the directive of current law to pay the maximum amount of special pay authorized in the special pay statute to the Chief Medical Director and Deputy Chief Medical Director. We favor this added flexibility.

Also, new section 4127(a)(2) of S. 2701 would empower VA to pay scarce specialty pay to a Chief of Staff, but only upon a determination that it is necessary in order to recruit and retain highly qualified physicians and dentists to serve as Chiefs of Staff, and the personal approval of the CMD. VA's proposal provides sufficient flexibility to pay such pay in those infrequent instances where the Chief of Staff actually performs specialist services, in addition to executive duties, and such additional pay is necessary for recruitment and retention. Therefore, we recommend VA's proposal in lieu of this provision, which is unduly restrictive of VA's authority.

Subsection 4127(c) of S. 2701 would provide for a VA medical center director to participate in determinations concerning scarce specialty and geographic location special pay at the director's facility, and for a director's recommendation to become effective unless disapproved within 45 days. Furthermore, only the CMD or a designated line supervisor could disapprove the director's recommendation. We think that VA regulations already adequately provide for VA medical center directors to participate in these determinations: they may recommend to the Chief Medical Director specific categories of physicians for incentive special pay for geographic location when there are extraordinary recruitment or retention problems, and they also may recommend specific medical specialties for incentive special pay for scarce medical specialty. Although physician recruitment and retention may have some minor local variances, we believe that specialty pay is national in nature. We are concerned that this provision may allow inconsistency in rates to develop. As a general rule, we support increased delegation of appropriate authorities to medical center directors; however, we believe that the Department should determine the appropriate level of delegation.

Subsection 4127(d) of S. 2701 would provide that scarce specialty pay may not be paid at a particular VA medical center absent a determination that geographic location special pay is insufficient for recruitment and retention needs. This provision is unnecessary. The authority for the payment of these elements of special pay already require, as a prerequisite, a determination that there is a recruitment and retention need.

Under section 4128 of S. 2701, retirement annuities of incumbent employees retiring on or after October 1, 1990, the bill's effective date, would be computed on the basis of what they would have received under existing law plus (a) 50 percent of the increase under S. 2701 after five years additional service, and (b) the full amount of the increase after ten years additional service. Full-time employees hired on or after October 1, 1990, would need 15 years of service (as under existing law) in order to count special pay in computing their retirement annuities. VA favors continuing the current fifteen year minimum service requirement. We, however, have serious concerns about the potential impact of phasing in retirement credit for the increase in special pay over a 10 year period for employees who are currently eligible or nearing eligibility to retire. Employees who have worked to become eligible to retire this October 1, when they get full credit for their special pay are very unlikely to extend their VA careers another 10 years and make full 7% contributions to the retirement fund during that period. We believe that many such employees will opt to retire sooner, rather than later, as contemplated by this provision. When viewed in comparison to other Federal pay and Executive Pay increases, this requirement is inequitable. We believe the phasing in of retirement credit should be omitted from the bill.

Additionally, section 6 of S. 2701 would provide that employees who, under section 103(b) of Public Law Number 96-330, elected not to have special pay included as basic pay for retirement purposes, have another opportunity to make such an election, and that such election is irrevocable. VA does not favor this provision; we believe that the VA bill provides the necessary incentives to recruitment and retention and that this provision is unnecessary.

Also, new section 4129 of S. 2701 continues existing law concerning on-going review of the adequacy of VA physician and dentist pay and the Quadrennial Report to the President. We recommend that the date for the first required report be extended from December 31, 1992, to 1993, so that VA may have more experience on which to base the report. In addition, new section 4130 of S. 2701 requires an annual report to the House and Senate Committees on Veterans Affairs regarding implementation of the special pay provisions and information concerning staffing and turnover. Among the information VA must provide are summaries of: amounts paid for each category of special pay, geographic areas and scarce specialties, reasons that physicians and dentists leave VA, reasons they change from full-time to part-time employment, reasons for any positions remaining vacant, and data concerning changes from part-time to full-time status. In addition, S. 2701 would require VA to explain any failure to designate a specialty as a scarce specialty where positions in that specialty remain vacant. In general, VA does not oppose these reporting requirements. However, we do object to the requirement to report reasons for not designating specialties as scarce specialties. As section 4123 specifically requires the CMD to base designations of scarce specialty on "extraordinary difficulties in the recruitment and retention of qualified physicians," and the information contained in the annual report includes data on staffing and turnover, we believe this additional requirement is unnecessary.

In addition to the special pay provisions, section 4 of S. 2701, would amend section 4113 of title 38 to authorize reimbursement, up to $1,000 per year, of outside continuing professional education expenses of full-time board certified physicians and dentists, approved under criteria prescribed by the Chief Medical Director. VA opposes this provision. VA already has authority to pay continuing professional education expenses and, we believe, effectively uses the limited resources available for employee training. In addition, VA itself provides high quality continuing professional education to many physicians and dentists, including that provided through the Department's Regional Medical Education Centers.

8.

The Honorable Alan Cranston

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2701 to the Congress.

Our cost estimate is enclosed.

Sincerely yours,

Edward J. Derwinski

Enclosure
EJD/gb

SPECIAL PAY FOR PHYSICIANS & DENTISTS - S.2701

Full-Time Physicians Special Pay Category	Proposed	FTEE	Cost
Full-Time	$ 9,000	6,732	$60,588,000
Tenure			
2 LT 4 years	5,000	1,416	$ 7,080,000
4 LT 8 years	9,000	1,293	11,637,000
8 + years	18,500	2,013	37,240,500
Total Tenure Cost:			$55,957,500
Scarce Specialty			
Anesthesiology	20,000	177	$3,540,000
Specialized Surgery	32,000	146	4,672,000
Radiology	28,000	402	11,256,000
Gen. Surgery/Urology	20,000	378	7,560,000
Physiatry	12,000	209	2,508,000
SCI	12,000	43	516,000
Psychiatry	12,000	1,138	13,656,000
Total Scarce Specialty:			$43,708,000
Board Certification	$ 2,000	4,376	$ 8,752,000
Responsibility Level			
Service Chief	$12,000	761	$ 9,132,000
Chief of Staff	20,000	155	3,100,000
MD Director	20,000	4	80,000
Medical Director	20,000	19	380,000
ACMD	24,000	7	16[illegible]000
ADCMD	28,000	1	[illegible]00
Total Responsibility Level:			$12,888,[illegible]00
COST FOR FULL-TIME PHYSICIANS:			$181,893,500
PROPOSAL COST FOR PHYSICIANS:			$217,156,625

Part-Time Physicians Special Pay Category	Proposed	FTEE	Cost
Tenure			
2 LT 4 years	$ 3,375	380	$ 1,282,500
4 LT 8 years	6,750	315	2,126,250
8 + years	13,875	705	9,781,875
Total Tenure Cost:			$13,190,625
Scarce Specialty			
Anesthesiology	$15,000	47	$ 705,000
Specialized Surgery	24,000	390	9,360,000
Radiology	21,000	94	1,974,000
Gen. Surgery/Urology	15,000	283	4,245,000
Physiatry	9,000	35	315,000
SCI	9,000	-0-	-0-
Psychiatry	9,000	242	2,178,000
Total Scarce Specialty:			$18,777,000
Board Certification	$ 1,500	1,411	$ 2,116,500
Responsibility Level			
Service Chief	$ 9,000	131	$ 1,179,000
Chief of Staff	15,000	-0-	-0-
Total Responsibility Cost:			$ 1,179,000
COST FOR PART-TIME PHYSICIANS:			$35,263,125

(Continued on Page 2)

SPECIAL PAY FOR PHYSICIANS & DENTISTS -

Full-Time Dentists	Proposed	FTEE	Cost
Primary	$ 3,500	814	$ 2,849,000
Tenure	800	814	651,200
Scarce Specialty	7,000	200	1,400,000
	16,000	62	992,000
Service Chief	5,000	162	810,000
COST FOR FULL-TIME DENTISTS:			$ 6,702,200
PROPOSAL COST FOR DENTISTS:			$ 6,879,575
SUBTOTAL - PROPOSAL COST:			$224,036,200
Benefits Cost			29,124,706
FINAL COST OF PROPOSAL:			$253.160,906
COST IN EXCESS OF FY 88 COST:			$96,712,406
LESS COST OF RESCINDING OFFSET:			24,200,000
FINAL COST OF PROPOSAL:			$72,512,406

Part-Time Dentists	Proposed	FTEE	Cost
	$ 2,625	55	$ 144,375
	600	55	33,000
	5,250	0	-0-
	3,750	0	-0-
COST FOR PART-TIME DENTISTS:			$ 177,315
FY 1988 COSTS			$138,450,000
Benefits Cost			17,998,500
			$156,448,500

10A52
May 30, 1990

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUN 26 1990

The Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

This is in response to your letter of June 12, 1990, requesting the Department's views on the amendment to S. 2100 relating to enhanced-use leases.

Our comments are enclosed. Thank you for this opportunity to share our views with you.

Sincerely yours,

Edward J. Derwinski

Enclosure
EJD/ccs

DEPARTMENT OF VETERANS AFFAIRS
COMMENTS ON THE AMENDMENT TO S. 2100
REGARDING ENHANCED-USE LEASES

The following comments are keyed to the proposed new Title 38 sections of the Committee's amendment to S. 2100.

1. Sec. 5061: The Department concurs in this provision.

2. Sec. 5062(a)(1)(A): The Department objects to the omission of the phrase "and any other provision of law inconsistent with this section" (found in Sec. 2 of S. 2532). As noted in its response to the Committee's questions of June 4, 1990, the Department's intent is to make inapplicable only those federal laws that are incompatible with the intent and purpose of the enhanced-use legislation. It is not possible to list with complete confidence all potentially conflicting or inconsistent laws. Given the varying types of agreements contemplated under the legislation, the potential for involvement of a number of issues (and thus a number of arguably applicable federal laws), including realty and service contract acquisition, administrative and use, is great. Failure to list some arguably inconsistent provision could result in protracted litigation, an outcome not intended by the legislation.

However, should the Committee decide not to insert the phrase "and any other provision of law inconsistent with this section," the Department requests that the following potentially conflicting federal laws be added to those listed in Sec. 5062(a)(1)(A):

38 U.S.C. Chapter 75
38 U.S.C. Sec 5009
20 U.S.C. Sec. 107 through 107(f)

3. Sec. 5062(a)(1)(B): The Department concurs in this provision, with the understanding of the central importance of the cost-benefit analysis.

4. Sec. 5062(a)(2) and 3: The Department concurs in these provisions.

5. Sec. 5062(b)(1): It is the Department's understanding that under this provision the Secretary shall prescribe, after consultation with the GSA Administrator, competitive procedures to be followed in the selection of a lessee under an enhanced-use lease. Consultation with the GSA Administrator is not required in the selection of a particular lessee. Based on this understanding the Department concurs in the provision and suggests the following clarification:

> "The selection of a lessee under an enhanced-use lease shall be made pursuant to competitive procedures prescribed, after consultation with the Administrator of General Services, by the Secretary."

6. Sec. 5062(b)(2), (3) and (4): The Department concurs in these provisions.

7. Sec. 5062(c)(1): The Department does not, in general, object to this provision, but notes that no flexibility is provided for enhanced-use leases for other benefits to the Southern California medical centers and that the restriction to employees of the Department is more limited than existing general law (40 U.S.C. § 490(b)) which covers all Federal employees.

8. Sec. 5062(c)(2)(A)-(D): The Department, with the understanding that the limitations surrounding child care services apply only to such services on land described in Section 421(b)(2) of P.L. 100-322, concurs in this provision.

9. Sec. 5063(a) and (b): The Department concurs in these provisions.

10. Sec. 5063(c): Formal notice to the Committees is a key element of both S. 2532 and S. 2100. In both bills, a property cannot become a "designated property" and, accordingly, cannot become the subject of an "enhanced-use lease" unless it has been identified by the Secretary in a written notice to the Committees, which is defined to be a "notice of designation." See, for example, Sec. 5062(a)(1)(A), 5061(1), 5061(2) and 5061(3) of S. 2100.

Sec. 2100 adds a requirement to publish a notice of the [notice of] designation in the Federal Register not more than 10 days after designating any property as a property for an enhanced-use lease, i.e., not more than 10 days after the Secretary has identified the property in a "notice of designation" to the Committees. See, Sec. 5063(c)(1). The Department concurs in this addition, but, in line with the comments below, suggests that it be combined with a revised Sec. 5063(c)(2).

The Department cannot concur in a 90/180-day time period for the notice of designation, as provided in Sec. 5063(c)(2)(A) and (B).

The notice of designation that the Secretary must send to the Committees will contain a substantial amount of detailed information. It will not be just a repeat of the information made available to the public pursuant to Sec. 5063(a) in advance of the Sec. 5063(b) public hearing. Rather, the Secretary's notice of designation will contain a summary of the full economic and cost-benefit analysis. Accordingly, sending of the notice of designation presupposes that a competitive bidding process has been held, that an award has been made, and that negotiations with the winning bidder have been completed, including negotiations over the economically significant terms of the enhanced-use lease.

In the Department's view, responsible private sector parties will be very reluctant to participate (and quite possibly will decline to participate) in a program that requires a 90-or 180-day waiting period after negotiations have been completed and the major terms of a contract have been arrived at. If responsible private sector parties do agree to participate, the Department anticipates that the risk and uncertainty generated by a long 90/180-day waiting period will result in materially less favorable economic terms to the Department.

Accordingly, the Department asks the Committee to use the 30-day period suggested in S. 2532, with a copy of the proposed enhanced-use lease to be supplied to the Committees 10 days before it is signed. To accomplish this, Sec. 5063(c)(1) and (2) would be combined and revised as follows (and 10 days would be substituted for 30 days in Sec. 5063(c)(4)):

> "(c)(1) An enhanced-use lease may not be entered into with respect to any property unless at least 30 days in advance of entering into such lease a notice of designation is provided to the Committees. Not more than 10 days thereafter, the Secretary shall publish a notice of the designation in the Federal Register." [Delete Sec. 5063(c)(2) (A) and (B); renumber Sec. 5063(c)(3) as "(c)(2)" and Sec. 5063(c)(4) as "(c)(3)".]

11. Sec. 5064(a), (b) and (c): The Department urges the Committee to retain these provisions but with a clarifying change to address comments made by the Veterans Service Organizations. The provision, with clarification, gives the Secretary needed flexibility to enter into cost-effective enhanced-use agreements by allowing the Secretary to give an enhanced-use lessee the option to buy if, but only if, the property becomes truly excess to the Government's needs. The Department's intention is to capture greater value than normally could be obtained under the Secretary's current disposal authority.

4.

To ensure that the Department's intention is not misunderstood, it is suggested that Sec. 5064(b) be modified to add the general definition of excess property found in 40 U.S.C. Sec. 472(e). The language could be added to Sec. 5064(b) as follows:

> "A special dispositon under this section may be made for cash or such other consideration as the Secretary and the Administrator of General Services jointly determine is in the best interest of the United States and upon such other terms and conditions as the Administrator considers appropriate; provided however that no special disposition under this section shall be made of any leased property unless such property is not required for the Department's needs and the discharge of the Department's responsibilities, as determined by the Secretary. In carrying out a special disposition of property under this section the administrator may utilize any other authority available to the administrator under any other provision of law."

12. Sec. 5065: The Department believes that S. 2532 provides the appropriate degree of flexibility in this area in its provisions for creation of an enhanced-use fund and disposition of enhanced-use lease proceeds.

13. Sec. 5066: The Department concurs in this provision.

14. Sec. 5067: The Department concurs in this provision.

15. Sec. 5068: The Department believes that in keeping with the test nature of this first-time enhanced-use lease program, child-care leases should be included within the 30-lease limit, with the understanding that a particular child-care lease may cover more than one child-care site. With this modification, the 10-per-year limit on leases should be dropped.

16. Sec. 5069: The Department concurs in this provision.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 12 1990

The Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Because of interest shown by the Committee, we are providing the enclosed analysis reflecting VA's views on H.R. 4557, which the House of Representatives passed on May 1, 1990. This fulfills our commitment, expressed in our report on S. 2701, to forward these comments.

Title I of this bill would revise the physicians and dentists special pay statute (38 U.S.C. § 4118) to authorize generally higher amounts of special pay for all elements of special pay and allow greater flexibility for using special pay to recognize length of service. Also, the bill would eliminate the overall cap on special pay for covered full-time employees. For covered part-time employees, the draft bill would impose a cap of 5/8 of the full-time rate. Also, H.R. 4557 requires ongoing Executive Branch review of physician and dentist pay and annual reports to Congress concerning implementation of the special pay. In addition to the special pay provisions, the bill would authorize reimbursing full-time physicians and dentists for continuing professional education, up to $1000 per year. As we have discussed with the Committee, these provisions are excessive and the VA strongly prefers the provisions submitted to Congress on June 11, 1990.

Title II of the bill would restructure the VA nurse pay system. It essentially incorporates the provisions of H.R. 1199. VA opposed H.R. 1199 in 1989, and still opposes these provisions.

Title III of the bill authorizes limited collective bargaining for title 38 medical professionals, and reforms the disciplinary process for tenured title 38 medical professionals. VA supports these provisions.

Title IV of the bill contains miscellaneous provisions. The most significant provision would exempt VA Medical Care from sequestration under Gramm-Rudman-Hollings. As indicated

2.

The Honorable Alan Cranston

in the Statement of Administration Policy submitted to the House of Representatives on April 26, 1990, unless H.R. 4557 is amended to delete this provision, I and the President's other senior advisors will recommend that the bill be vetoed.

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report to the Congress.

Sincerely yours,

Edward J. Derwinski

Enclosure
EJD/tmck

1.

Physician/Dentist Special Pay

VA agrees that the current special pay statute should be amended to provide greater flexibility in setting appropriate amounts, and to authorize generally higher amounts, of certain types of special pay for physicians and dentists employed by the Veterans Health Services and Research Administration (VHS&RA). Physicians and dentists special pay has been a critical factor in the VA's ability to attract and retain a qualified medical work force. Within the past decade, however, as documented in the VA's Quadrennial Report to the President on the Adequacy of Special Pay for Physicians and Dentists (submitted to the House and Senate Committees on Veterans' Affairs and the Office of Management and Budget in October 1989), the VA's special pay system has not kept pace with changing marketplace conditions. There has been no increase in special pay since 1980. As a result, the VA is now facing a crisis in the recruitment and retention of qualified physicians and dentists, particularly with regard to scarce medical specialties and positions of administrative and managerial responsibility.

In some medical specialty areas, VA lags 33 percent or more behind national pay rates. As a result, VA has been forced to rely increasingly on scarce medical specialty contracts to insure availability of certain specialists. These contracts, traditionally more costly than employment as a means of securing medical services, are becoming increasingly more expensive. At the same time, they serve to conceal the real vacancy rate within those specialties. In addition, although VA's physician work force increased by 14 percent from 1981 to 1988, the increase consisted primarily of a large increase in the number of part-time physicians. A higher percentage of part-time physicians means that VHS&RA must hire more physicians to accomplish the same amount of work, at increased personnel costs. This shift to part-time employment is due in large part to declining ability to compete in the recruitment market for well-qualified physicians. This is particularly true for so-called scarce specialties such as radiology, anesthesiology, and special surgery.

In addition, vacancies for senior physician administrators such as Chiefs of Staff have become increasingly more difficult to fill. Part of the problem is a lack of monetary incentive for VA physicians to accept the added responsibility of these senior positions.

Moreover, the increasing necessity of hiring at higher grades in order to remain competitive has led to the problem of pay "compression," virtually eliminating any career ladder for physicians.

As a result, VA has developed proposed legislation which we believe best addresses these problems. Also, VA's proposed legislation is firmly based on the findings in the Quadrennial Report. This proposed legislation was submitted to Congress on June 11, 1990.

H.R. 4557 would re-establish the special pay provisions in a new subchapter III of chapter 73 of title 38, United States Code (existing subchapter III would be redesignated subchapter VI). Like VA's proposed bill, the House-passed bill revises the special pay statute to provide greater flexibility in setting, and would increase, certain types of physician and dentist special pay. Our comments address those features which differ from VA's proposed physician and dentist special pay legislation or from provisions of current law.

A principal difference between H.R. 4557 and the VA proposal (as well as current law) is that the House bill would eliminate primary special pay. Primary special pay guarantees to all eligible physicians and dentists a minimum amount of special pay, irrespective of the individual's entitlement to special pay under any of the "incentive" categories. Instead, H.R. 4557, in new section 4133 places all special pay under what are now incentive special pay categories, i.e., full-time status, tenure, scarce specialty, position of responsibility, board certifi- cation, and geographic location. As we noted in our submission of VA's draft bill, VA believes that most of the current primary special pay should be reallocated to special pay for tenure. However, some amount of primary special pay remains necessary to insure adequate and competitive starting salaries. The VA draft bill's provision for $2,000 primary special pay achieves this purpose.

New sections 4133 and 4135 in H.R. 4557 would increase the special pay under the various incentive categories, for physicians and dentists, respectively. These increases are more than the VA proposal would provide, substantially more in some categories. If the maximum special pay in each category were authorized for the Chief Medical Director and Deputy Chief Medical Director, those officials' total salaries would exceed the $200,000 salary of the President. The lower increases we have proposed sufficiently meet the need for increased special pay. In addition, the data in the Quadrennial Report support VA's lower proposed increases. H.R. 4557's increases are excessive, and would unnecessarily expend limited salary resources. Thus, the increased cost of Title I of the House bill over FY 1988 would be $29.5 million in FY 1991 and $58.9 for each of the subsequent years, for a total five-year cost of $265.2 million. FY 1988 is used as the base year for comparing increased costs under H.R. 4557 and VA's proposal with previous estimates used in the VA's Quadrennial Report to the President on the Adequacy of Special Pay for Physicians and Dentists.

With respect to tenure special pay for physicians, H.R. 4557 authorizes a range of pay for each of four subcategories:

$3,000 to $6,000 for 2 to 4 years tenure
$6,000 to $12,000 for 4 to 8 years tenure
$12,000 to $18,000 for 8 to 15 years tenure
$15,000 to $25,000 for over 15 years tenure

H.R. 4557 does not specify any criteria for applying these ranges. This tenure special pay would reward continuing tenure with VA. We note that the VA proposal allows for more frequent pay increases rewarding continuing tenure.

With respect to special pay based on level of responsibility, H.R. 4557 departs from current law and VA's proposal and would provide higher amounts of monetary recognition for the Chief Medical Director and the Deputy Chief Medical Director. The practice, however, has been to recognize these positions through higher basic pay, rather than through higher amounts of special pay than that provided for other top executive physicians. The Chief Medical Director is now paid at Executive Level III, and the Deputy Chief Medical Director at Executive Level IV. All other executive physicians are paid no higher than Executive Level V.

Also, H.R. 4557 departs from current law and VA's proposal by failing to include Deputy Service Directors. Although some Deputy Service Directors would qualify for position special pay because they are paid at the Executive grade, others who are paid at the Medical Director and Chief grades would not qualify.

A significant feature of H.R. 4557 is its treatment of special pay for part-time physicians and dentists. Part-time physicians and dentists would be paid a pro-rata amount of the special pay authorized for full-time service, based on the proportion that the part-time service bears to full-time service. However, H.R. 4557 limits that proportion to 5/8 of the full-time rate. Current law limits some specific aspects of incentive special pay for part-time physicians and dentists to approximately 3/4 of the full-time rate. In our view, this provision of the House bill will discourage part-time physicians and dentists from working 3/4 or 7/8 time. This could result in staffing or coverage shortages. Moreover, we do not think that discouraging part-time employment is an appropriate or practical way to encourage or promote full-time employment. We think that VA's proposal more effectively encourages full-time employment by increasing special pay for full-time status.

Under new section 4137(a) in the House bill, certain physician and dentist managers in VA Central Office receiving special pay on the basis of their Central Office positions would not be eligible for special pay based on scarce specialty. We agree that it would be inappropriate to pay scarce specialty pay to physician and dentist managers who are not actually employed as specialists, and that special pay should be paid to them on the basis of their positions. However, there are some problems with the provision. In the first place, it does not apply to all VA Central Office managers, but is limited to Service Directors, Deputy Assistant Chief Medical Directors, Assistant Chief Medical Directors, the Associate Deputy Chief Medical Director, the Deputy Chief Medical Director and the Chief Medical Director. It does not apply to other VA Central Office management officials such as Deputy Service Directors, the Deputy and Assistant Associate Deputy Chief Medical Directors and various staff physicians and dentists.

In contrast, VA's proposal applies to more of these positions, but does not contain a blanket prohibition on paying scarce specialty pay to physicians and dentists in VA Central Office. Thus, the VA proposal provides greater flexibility with respect to special pay for these employees. Moreover, this section of H.R. 4557 could serve as a disincentive to those physicians and dentists receiving the maximum scarce specialty pay from accepting VA Central Office management positions. H.R. 4557 authorizes physician scarce specialty pay as high as $40,000; but, except for the Deputy Chief Medical Director and the Chief Medical Director, H.R. 4557 authorizes position special pay much less than that amount. Similarly, H.R. 4557 authorizes dentist scarce specialty pay as high as $20,000; but, H.R. 4557's position pay is much less than that amount.

As a technical matter, we note that new section 4133(c) would continue the directive of current law to pay the maximum amount of special pay authorized in the special pay statute to the Chief Medical Director and Deputy Chief Medical Director, without any reference to the restriction on eligibility for scarce specialty special pay, discussed above.

New section 4140 requires an annual report to the House and Senate Committees on Veterans Affairs regarding implementation of the special pay provisions and information concerning staffing and turnover. Among the information that VA must provide are reasons that physicians and dentists leave VA, reasons they change from full-time to part-time employment, and reasons for any positions remaining vacant. While VA does not oppose the reporting requirement, we feel that it would be impossible to provide a reason for each and every staff resignation and to provide accurately the reason for each and every vacancy (which number 600 at any given time), and that it would be more practical to require VA to collect and report such data generally rather than case-by-case, for example, by categories of physician specialties.

Under section 104 existing special pay agreements would continue in effect until their anniversary date. In contrast, the VA draft bill would not require continued coverage under existing agreements, but would allow VA to convert to new ones under its new special pay statute. Thus, the higher levels of special pay authorized by VA's draft bill could be implemented much earlier and, therefore, more effectively. Also, possible higher special pay rates, under VA's earlier conversion, could be used in computing retirement benefits.

In addition to the special pay provisions, section 103 of H.R. 4557, in an amendment to section 4113 of title 38, authorizes reimbursement, up to $1,000 per year, of outside continuing professional education expenses of full-time board certified physicians and dentists. We cannot support this unfunded drain on scarce medical care dollars. VA already has authority to pay continuing professional education expenses and, we believe, effectively uses the limited resources available for employee training. In addition, VA itself provides high quality continuing professional education to many physicians and dentists, including that provided through the Department's Regional Medical Education Centers.

Nurse Pay

Title II of the bill would restructure the VA nurse pay system. It essentially incorporates provisions of H.R. 1199, which VA opposed in 1989, on this subject.

The bill would add a new section 4141 to chapter 73 of title 38, to govern the grades, rates of pay, and administration of nurse pay. The proposed new pay system would compress the current "eight grade" pay structure into four grades, each with 20 equal step increments. Each of the new grades would correspond to a specified range of grades in the title 5 General Schedule. Thus, the new "Entry Grade" would correspond to GS 6-10, the "Intermediate Grade" would correspond to GS 9-12, the "Senior Grade" would correspond to GS 12-14, and the "Director Grade" would correspond to GS 14-16. The lowest and highest step in each grade would correspond to the lowest and highest step on the corresponding range of General Schedule grades. Each of these "new" grades would encompass two of the existing nurse pay grades, but would raise the maximum rate by roughly one GS grade.

The new section 4141 would also require that nurses who perform satisfactorily must receive a step increase at least once every two years. If promoted within the grade, they must receive a step increase, and if promoted to a higher grade, they must receive a higher rate of pay than before the promotion.

Another very troublesome provision would authorize the Secretary to permit medical center directors to appoint nurses at pay rates higher than would otherwise be applicable, if the director determines that a higher rate is necessary to hire nursing staff. A director may authorize the higher pay rate only if necessary to provide pay that is competitive with nurse pay in the local labor market, to achieve adequate staffing at the facility, or to recruit nurses with specialized skills. The director must justify the higher rate of pay in writing, and submit the justification with the first budget submission made after the increased pay rate is authorized. If a nurse from a facility with such increased pay rates transfers to a facility that does not pay higher rates, it would be permissible to reduce that nurse's step within a grade, if necessary to be consistent with the pay structure at the new facility. That nurse's pay grade could not be reduced, however.

Overtime Rates for Nurses

A final provision in new section 4141 would repeal the existing limitation on the amount of overtime that may be paid to nurses. Current law permits payment of overtime at one and one-half times the nurse's basic pay rate, but caps the overtime rate at one and one-half times the basic rate for a nurse an intermediate grade. This bill simply removes this administratively waivable cap.

Comparing VA Nurse Pay Bill

On April 9, 1990, we forwarded VA's draft legislation that would revise the nurse pay system by partially converting it to a community-based pay system, and by providing greater flexibility and decentralization to better target salary resources to areas of need. This draft legislation is based on the recommendations of the VA Nurse Pay Task Force, the findings of the contractor study (conducted pursuant to Public Law No. 100-322), and our consideration of the nurse pay provisions in H.R. 1199 and S.13. As we explained when we forwarded the VA draft bill, we believe that VA's proposal represents the best and most cost effective measures to resolve the situation, and it better addresses our needs than do the provisions of title II of H.R. 4557. In this regard, costs for title II of H.R. 4557 are $36.0 million for the first year and $198.0 million over five years. In contrast, total costs for VA's draft bill are $31.2 million for 1 year, and $155.9 million for 5 years.

Collective Bargaining & Disciplinary Reform

Title III of H.R. 4557 authorizes limited collective bargaining for title 38 medical professionals, and reforms the disciplinary process for tenured title 38 medical professionals. VA favors title III.

Collective Bargaining

Section 301 amends section 4108(a) of title 38, United States Code, to provide for limited collective bargaining for title 38 personnel.

The recent decision in Colorado Nurses Association v. Federal Labor Relations Authority, 851 F.2d 1486 (D.C. Cir. 1988), ruled that mandatory collective bargaining under the Federal Service Labor-Management Relations Statute (principally chapter 71 of title 5, United States Code) does not apply to VA health-care professionals appointed under this chapter. In this regard, Colorado Nurses held, with specific reference to section 4108, that the Secretary has exclusive discretion to set the conditions of employment for these health-care professionals. In the litigation over this issue, which dates back many years, the Department sought to preserve the discretion and flexibility Congress granted the Secretary over the working conditions of these employees in order to assure high quality patient care. Congress had found that regular civil service provisions had thwarted the Department's efforts to provide such care.

The bill would establish a collective bargaining program for title 38 health-care professionals on the same basis as title 5 employees under chapter 71 of title 5, with an important exception: collective bargaining (and grievance/arbitration) provisions will not cover any matter or question concerning or arising out of "professional conduct or competence." The Department generally supports collective bargaining where there is no interference with its patient-care mission. This legislation would authorize bargaining under the jurisdiction of FLRA with an exception for these patient-care concerns. Thus, these matters involving professional conduct or performance would remain within the sole authority of the Secretary, and no arbitrator, other agency or court may review the Secretary's exercise of that authority. The bill defines "professional conduct or performance" to mean: direct patient care, clinical competence, professional judgment or peer review.

With one exception, section 301 continues the remaining current provisions of section 4108. It deletes the current section 4108(a)(4) which is redundant and needlessly complicates the issue of VA employees' authority to accept cash reimbursement for official travel expenses.

Section 304(a) of the bill makes clear that under the newly-created authority for chapter 71 collective bargaining, there is no change in existing recognitions of bargaining units or exclusive representatives, which the bill preserves.

Disciplinary Reform for title 38 Employees

Section 302 reforms the current Disciplinary Board process for tenured title 38 employees. It considerably expands upon previous VA proposals.

Disciplinary Process Under Current Law

Existing law imposes disciplinary action machinery that is centralized, cumbersome and protracted. It involves several administrative levels within the Department. Because of delays associated with the scheduling of these hearings, often at the employee's request, it is not unusual for the disciplinary cases to take far longer than a year to be completed. Meanwhile, the employee remains on the payroll, drawing full pay, including special bonuses and premiums, even though his/her duties may be restricted during the pendency of this hearing and appeal process due to the nature of the charges, e.g., gross malpractice or incompetence due to current drug abuse. We believe it noteworthy that the current pre-decision hearing requirement is a rarity in Government disciplinary action systems. In this regard, we note that the civil service due process system provides for post-decision hearing.

That Disciplinary Board process is prescribed in current section 4110 of title 38 of the United States Code. The provisions of this section have remained unchanged, except for technical amendments, since its enactment in 1946. This existing disciplinary board process applies to all disciplinary actions against tenured physicians, dentists, podiatrists, optometrists, nurses, physician assistants and expanded function dental auxiliaries, for reasons of inaptitude, inefficiency, or misconduct, for even the least severe discipline. Under the current system, disciplinary boards composed of three peers are appointed by the Chief Medical Director (CMD), and the chairman and secretary of the board are appointed by the Secretary. Current procedures involve notice of charges, opportunity for a pre-decision hearing, right to legal representation and post-decision appeal. The hearing, required by request of the employee, is a trial type adversarial hearing of which a verbatim transcript is made.

When charges are sustained, the disciplinary board recommends appropriate disciplinary action to the Secretary, who either approves, modifies, or disapproves such recommendation. The decision of the Secretary is final. The Secretary may delegate to the CMD the authority to appoint a chairman and secretary to the disciplinary board and to receive and act upon recommendations of the board, in which case the employee may appeal the decision to the Secretary.

Changes Proposed by H.R. 4557

The legislation would streamline this process by decentralizing the authority to initiate action to the local level, where the employees would continue to have a fair opportunity to answer charges after written notice. If the charges are sustained, management imposes suitable disciplinary action, and the employee would have an opportunity for a post-action grievance/arbitration or peer review hearing, as appropriate. A well-trained cadre of board members would expeditiously conduct the limited number of peer review disciplinary board hearings where professional matters are at issue. For other matters, the employee could request review by a grievance arbitrator or hearing examiner, on the same expeditious basis as non-title 38 Federal employees.

It is expected that, as the result of this amendment of section 4110, many disciplinary actions (e.g., those for misconduct not involving professional matters, such as AWOL, theft of Government property, conflict of interest) involving physicians and nurses will be subject to the grievance/arbitration process, the same as those affecting non-title 38 civil service employees. However, consistent with the patient-care purpose of the 1946 law, the legislation retains the peer review disciplinary board hearing, with some improvements to streamline the process, for those limited number of cases, as determined by VA, which involve direct provision of patient care, peer review, or clinical or professional competence or judgment.

The notice advising the employee of the decision on the adverse action must advise the employee whether the action is one involving professional conduct or performance, which must be appealed to a Disciplinary Appeals Board or under the VA administrative grievance procedure, depending on the severity of the penalty. The employee may challenge this determination before the Disciplinary Appeals Board or in any appeal to the Secretary. As a part of their review, both the Board and the Secretary must review this determination. However, these reviews are not separate steps in the process. That is, there is no bifurcated proceeding solely to determine this issue before reviewing the merits. If this review concludes that the determination regarding professional conduct or competence was erroneous, the employee would be directed to the appropriate appeals procedure. In no event may any other agency or court review the Secretary's determination whether a matter concerns or arises out of professional conduct or competence.

The vast majority of VA physicians and nurses are hardworking and caring professionals dedicated to providing the very best patient care. This amendment would more expeditiously remove the few "bad apples" from patient contact, while affording them due process to challenge disciplinary actions after the fact, similar to that afforded to non-title 38 Federal employees. Also, as is the case with non-title 38 Federal employees, if upon review the disciplinary action is determined to be improper, the disciplinary action would be expunged from the employee's record and the employee would be entitled to backpay for any lost wages.

Under the legislation's reformed disciplinary process, in new section 4110A, major adverse actions (involving professional conduct or competence) begin with the presentation of charges by a charging official stating the specific basis for each charge and including a proposed penalty. The employee is afforded the right to be represented by a representative of the employee's own choosing and is given the opportunity to respond to the charges, after which a higher ranking official makes a decision on each charge and determines the appropriate penalty. The legislation would permit a decision official to hold an action in abeyance upon request of the employee while the employee obtains counseling or treatment for alcohol or drug abuse covered by the Rehabilitation Act of 1973. Thereafter, the employee may appeal to a Disciplinary Appeals Board and obtain a hearing. The legislation empowers the Board to sustain or dismiss each charge, in whole or in part and, as appropriate, to uphold, modify or reverse the adverse action. Under its power to modify the action, the Board may change, reduce or increase (but no greater than the penalty originally specified in the notice of charges) the penalty. Thereafter, the Board's decision is referred to the Secretary, for execution of the decision, which would include, as appropriate, reinstatement, backpay, expungement of records, or other remedy. In cases where the Secretary finds that a Board's decision is clearly contrary to the evidence or unlawful, the Secretary may reverse the decision or remand the matter to the Board.

The legislation imposes time limits at each stage in order to shorten the processing time now required. The Department may waive these time limits at the employee's request upon good cause shown.

The legislation specifically authorizes representation of management in any Disciplinary Appeals Board proceeding. The Office of General Counsel generally will provide this representation.

The legislation provides that adversely affected employees may seek judicial review of a board decision, as executed by the Secretary. This provision does not create any new right to judicial review, but only takes into account the existing right to judicial review by adversely affected employees under other provisions of law. In this regard, the legislation sets forth the standard of review used by the courts, that is, review to assure (1) that the action is not arbitrary, capricious, an abuse of discretion, or otherwise unlawful; (2) that procedures required by law and regulation have been followed; and (3) that the action is supported by substantial evidence.

A new section 4110C provides for the appointment and proceedings of Disciplinary Appeals Boards under the Secretary's regulations. This new section continues the requirement of current section 4110 for three-person peer boards, with one member serving as Chairman and one as Secretary. The legislation also continues existing authority for the Chairman and the Secretary to administer oaths.

The legislation authorizes the Chairman of a Disciplinary Appeals Board to authorize review and access to relevant patient records. The Chairman may impose appropriate measures to assure patient privacy. Existing criminal penalties apply to improper disclosures.

The legislation requires the Secretary to establish and train a panel of qualified employees from which members of Disciplinary Appeals Boards are appointed. The legislation requires that the list of panel members be made publicly available, and that notice of a name being on the list be given at least 30 days before such person is assigned to serve in a particular case.

A new section 4110B directs the Secretary to prescribe regulations establishing an administrative grievance/appeal procedure for adverse disciplinary personnel actions which: (1) involve professional conduct or competence, but do not constitute major personnel actions, as defined; and (2) do not involve professional conduct or competence and are at any level of severity. In addition, with respect to those actions in category (2), bargaining unit employees would have the option to appeal either under this Department administrative grievance appeal procedure, or under a negotiated grievance procedure established under collective bargaining pursuant to section 301 of the bill.

The Department's administrative grievance procedure would be required to include the following:

> (1) formal review by an impartial Department grievance examiner who, in cases involving professional conduct or performance, must be a member of the panel for Disciplinary Appeals

Boards; (2) a prompt report of findings and recommendations by the examiner; and (3) the right of the affected employee to review the examiner's report by a higher level official than the proposing official.

Section 303 of the legislation requires the Secretary to prescribe implementing regulations for sections 4110, 4110A, 4110B and 4110C no later than one hundred and eighty days after enactment. These regulations are not subject to bargaining under chapter 71 of title 5. The Department must publish these regulations in the Federal Register for notice and comment at least thirty days before they become effective; the Committee intends that the notice period does not extend the 180 day period during which VA must move to have regulations in place and effective.

Section 304(b) provides for the continuation of pending cases under provisions of current law.

Miscellaneous

Title IV of the bill contains several miscellaneous provisions.

Section 401 exempts the VA Medical Care appropriation from sequestration under Gramm-Rudman-Hollings. VA opposes this provision as unneeded. Current law already protects VA's health care activity by a two percent cap on sequestration. This cap sufficiently recognizes the importance of veterans' health care and the need to cushion the effect of sequestration.

Section 402 implements a VA request for a waiver from the reporting requirement in section 210(b)(2) of title 38, United States Code. Section 210(b)(2) requires VA to report certain administrative reorganizations to Congress before implementing them. VA requested a waiver from this reporting requirement for the Veterans Health Services and Research Administration reorganization eliminating the 27 district offices, and reducing the number of regions from seven to four. VA supports this provision.

Section 403 amends section 4054 to provide that judges of the Court of Veterans Appeals shall be paid at the same rate as judges of the Court of Military Appeals. VA defers to the Office of Personnel Management on this provision.

Section 404 amends section 4107(e) to extend registered nurse premium pay to licensed practical nurses, licensed vocational nurses and nursing assistants. VA believes that this provision should be amended consistent with its draft bill submitted to OMB on February 22, 1990. VA's draft bill would extend existing discretionary authority to pay Saturday premium pay to nursing assistants. Current law empowers VA to pay registered nurse premium pay, including Saturday premium pay, to licensed practical nurses and licensed vocational nurses when necessary for recruitment and retention. VA does not have a recruitment and retention problem at all facilities and, thus, discretionary authority is sufficient to meet its needs.

Moreover, H.R. 4557's provision would mandate the payment of all forms of registered nurse premium pay to these employees. These employees already are eligible for many forms of premium pay, such as overtime, night differential, and on-call pay. Thus, the breadth of this provision renders it redundant.

The bills listed below were introduced by the Committee Chairman at the Administration's request made in letters dated as shown and printed in the Congressional Record as shown.

Bill number	Date of letter of transmittal	Congressional Record citation	
		Page	Date
S. 2102	January 25	S 1011	February 7
S. 2454	April 10	S 4568	April 19
S. 2456	April 13	S 4571	April 19
S. 2482	April 13	S 4730	April 20
S. 2483	April 12	S 4731	April 20
S. 2484	April 12	S 4733	April 20

On February 13 and 28, 1990, and June 1, 1990, the Committee Chairman asked the Secretary of Veterans Affairs for reports setting forth the agency's views on S. 2128, S. 2145, and S. 2615, respectively. By the date on which this report was filed, reports had not been submitted on S. 2128, S. 2145, or S. 2615. On May 9, 1990, the Committee Chairman requested the Department of Defense for reports setting forth the agency's views on S. 2556. By the date on which this report was filed, the report for S. 2556 had not been submitted.

On May 9, 1990, the Committee Chairman requested the Secretary of Veterans Affairs for a report on S. 2556 which was not received by the date on which this report was filed. In lieu of such report, the excerpt from VA testimony at the May 18, 1990, hearing giving the Department's views on this bill, is reprinted below.

STATEMENT OF

ANTHONY J. PRINCIPI

DEPUTY SECRETARY

DEPARTMENT OF VETERANS AFFAIRS

BEFORE THE

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES SENATE

MAY 18, 1990

Mr. Chairman and Members of the Committee:

I am pleased to be here today to present the views of the Department of Veterans Affairs concerning several important bills now pending before your committee.

* * * * *

S. 2556 - RADIATION EXPOSED-VETERANS COMPENSATION AMENDMENTS OF 1990

Mr. Chairman, S. 2556 would amend the law providing for compensation of veterans exposed to ionizing radiation in service. It would add two disease categories to the list of those statutorily presumed service connected if suffered by certain exposed veterans, and remove the time limits which currently dictate when those diseases must arise for the presumptions to apply. It would also mandate a process by which VA would administratively address the claims of other veterans exposed to radiation in service.

Mr. Chairman, as you indicated upon introducing this bill, the BEIR V report identifies cancer of the salivary gland, kidney and bladder as having occurred disproportionately among the Japanese atomic-bomb survivors. We would not object to their inclusion on the statutory list. We would defer on the issue of cancer of the other urinary tract organs your bill would also include (but which are not discussed in BEIR V) pending advice we shall seek from our Veterans Advisory Committee on Environmental Hazards.

As you know, VA has proposed replacing the current 30-year post-exposure presumptive period for leukemias with a 40-year timeframe. We continue to believe that this represents a period during which leukemia may reasonably be expected to appear if it is indeed related to the exposure. For that reason, we do not favor removal of all time constraints from the leukemia presumption, but would not object to their elimination with regard to solid tumors.

We oppose section 3 of the bill, which would compel the Department to create additional presumptions in law with respect to other exposures to radiation in service. In short, should VA, after consulting with DOD, determine that other military activities "likely" resulted in individuals' exposure to ionizing radiation above background levels, and that the maximum doses so experienced may be associated with any of the statutorily presumptive diseases--at least as a "reasonable possibility"--under this provision a rebuttable presumption of service connection would arise respecting anyone who performed that activity and later contracted such a disease.

As a preliminary matter, we would advise this committee that the identification of all radiation activities and the maximum possible exposures--which of necessity would have to be attempted by DOD and not VA--would be so massive an undertaking as to prove infeasible. It is a fact of modern life that many occupational endeavors, especially the concentration of technical ones in our modern military forces, expose us to some radiation above natural-background levels. Not only would cataloging all of these activities prove a monumental task, but divining the "maximum level" of exposure from each, which would literally require an examination of all anecdotal information concerning accidents and other untoward events, would as a practical matter prove impossible.

Apart from these practical considerations, however, we also object to Section 3 on policy grounds. We understand these provisions to mean if DOD were to advise VA that in one instance a medical-lab technician was accidentally exposed to a large dose of radiation, and VA were to determine such a dose capable of causing one or more cancers, VA would have to create a presumption that would apply equally to all lab technicians who performed similar functions, regardless of whether they were exposed at all.

We ask that the committee allow us to continue working under VA regulations that permit us to look at claims involving ionizing radiation exposures of any description or circumstance and to award benefits on the basis of their individual merits. Section 3 of S. 2556 would result in overinclusive presumptions that would not have support in credible scientific evidence.

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MINORITY VIEWS OF SENATORS FRANK H. MURKOWSKI, ALAN K. SIMPSON, AND STROM THURMOND

GRAMM-RUDMAN-HOLLINGS EXEMPTION FROM SEQUESTRATION

In the strongest possible terms, we oppose the provision in the Committee bill which would exempt VA's medical care account from sequestration under Gramm-Rudman-Hollings.

This provision was proposed by Senator Cranston as an amendment to S. 2100 and was adopted by the Committee by a vote of 6 to 4.

Under current law, VA medical care is already protected under Gramm-Rudman—there is a 2-percent cap on the sequestration. That shows that Congress already placed VA medical care in a special position.

—That cap is fair and we strongly support it.

—What we don't support is a total exemption for VA medical care.

Let us explain why we don't support this provision.

—President Bush is strongly opposed to this provision. His senior advisors have stated that they will recommend a veto of any bill which contains this language.

—VA Secretary Ed Derwinski is also strongly opposed to this provision. In fact, he sent a letter to Committee Members stating his strong opposition. (copy attached)

—The Congress and the White House are currently negotiating a budget agreement in an attempt to reach a consensus on deficit reduction. Given the recent deficit projection—which is over $168 billion for fiscal year 1991—we hope we are able to reach a bipartisan agreement. Let's give that effort a chance without disruption.

—Enactment of this provision would send the wrong message to the Budget negotiations and may provoke a profusion of Congressional activity to exempt other programs from Gramm-Rudman. If this were to occur, it would only serve to exacerbate the already tenuous and delicate budgetary negotiations. Simply put, we need to maintain some discipline in the budget process. Any modifications to Gramm-Rudman should be made in the context of the Budget Summit and Budget Process Reform.

—The provision does not modify the deficit target under Gramm-Rudman therefore enactment of this provision would not increase the deficit. But steeper reductions in other programs would result from enactment of this provision. These other programs—including VA construction and research—will have to take a larger cut under Gramm-Rudman-Hollings.

—These other domestic programs also help veterans and their families.

The supporters of this provision argue that Gramm-Rudman totally exempts Medicaid (health care for the poor), Aid to Families with Dependent Children, child nutrition programs and other programs for the poor from sequestration. And that because VA provides health care to a lot of poor veterans, VA should also be exempt.

We would respond by stating that to be considered "low income" by VA standards, a single veteran can have income up to $17,000 annually. This far exceeds the income needed to be Medicaid eligible. Additionally, poor veterans remain eligible for Medicaid financed health care. So any sequester would not preclude these veterans from having access to health care.

The supporters of this provision argue that if other programs are exempt, don't our veterans—who sacrificed so much for our freedom—also deserve to have their programs exempt. In fact, one could argue that they are more entitled to prctection from funding cuts.

To this argument we would respond by arguing that there is no question that veterans programs are a high priority for Congress. In fact, many VA programs—including disability compensation and pension programs—are currently exempt from sequestration. But let us keep in mind that only 13 percent of all veterans receive health care from VA.

Veterans and their families benefit from other government programs which will be cut further due to enactment of this provision.

Veterans benefit from a sound economy. They are, afterall, our nation's farmers, factory workers, company executives, and small business owners.

Finally, the supporters of this provision would argue that sequestration chips away at funds which the Congress has provided for veterans programs under Appropriations bills and it makes planning for programs difficult. As a result of sequestration in fiscal year 1990, VA medical care took a Gramm-Rudman cut of $158 million this year and then Congress enacted a $94 million supplemental.

To that we would argue that we agree that planning is difficult under this scenario. But this is true for all Agencies, Departments, and programs which are subject to sequester. Therefore, we should make the decisions necessary to meet the mandated deficit targets so that a sequester can be avoided.

Seldom does the Veterans' Affairs Committee consider issues which have attracted so much attention from individuals outside the world of veterans. This is one such provision.

The House has passed as part of H.R. 4557 an identical provision. Therefore, if the Gramm-Rudman provision is retained in the Senate bill it will not be conferencable.

For the reasons stated above, we hope that this provision is stricken from the bill when it comes to the floor for consideration.

VA Physician and Dentist Pay

We oppose the provisions in the Committee bill relating to physician and dentist pay. These provisions were derived from S. 2701 as introduced by Senator Cranston. During the Committee's markup on July 12, Senator Murkoswki offered an amendment to substitute VA's proposed physician and dentist pay bill (S. 2732) for the language in the Committee bill. This amendment was defeated by a 6 to 3 vote.

Let us first state that *we support increased pay for physicians and dentists.* We believe all the parties—including VA, the House, and Senator Cranston—recognize the need for VA to be competitive.

VA submitted its legislative proposal to the Congress on June 11, 1990. Although no hearing was held on this bill, the issue of physician and dentist pay was addressed during the June 14 hearing. The approach supported by Senator Cranston and the VA's approach in addressing physician and dentist pay are very similar in concept. They both propose to increase special pay for tenure, board certification, full-time status, scarce specialty, and geographic need.

The most striking difference between the two is their cost. The provisions in the Committee bill would cost $68 million in the first year of full implementation. S. 2732 would cost only $39.7 million.

Given the fiscal and economic difficulties facing the Nation, we should not adopt measures that are more costly than thorough consideration would justify. VA's bill was drafter to balance the need to recruit and retain quality physicians and dentists and the need to maintain fiscal responsibility.

VA's bill would provide for an increase of 25 percent in special pay expenditures. The provisions in the Committee bill would unnecessarily increase the cost by a remarkable 45 percent.

VA's budget request for fiscal year 1991 includes $38 million for a physician pay initiative. Enactment of the VA bill would ensure that VA has the resources in 1991 to pay for increased pay.

We strongly believe that we should enact a bill which VA can afford to implement.

We would further suggest that the Congress enact VA's proposal because they are in the past position to determine their needs. It is the worst kind of micromanagement to say that the Congress knows better than the VA the salary requirements of their employees.

Finally, we could again increase pay if the levels are insufficient.

We hope that during Senate consideration of this bill that this issue will again be addressed. We should adopt a physician and dentist pay proposal which is fiscally responsible and achieve the goal of making a more competitive employer.

COMPREHENSIVE PROGRAM FOR HOMELESS VETERANS

Although no Senator offered an amendment to this provision during the Committee markup, with the exception of the provisions mentioned below, we oppose the provisions in the bill relating to a Comprehensive Program for Homeless Veterans:

(1) Increased authorization of appropriations for the Homeless Chronically Mentally Ill (HCMI) Program and the Homeless Domiciliary Program.

(2) Extended authority to conduct the HCMI Program.

We oppose the remaining provisions because:

—Our Committee has *not* held hearings on these provisions.

—The provisions don't provide for new programs necessarily—but more expensive reports which are administratively burdensome.

—We'd rather spend limited resources on help ing homeless veterans than on VA staff assigned to write reports.

—It would be extremely difficult and costly to determine the extent of homelessness and the needs of homeless veterans, especially in rural areas.

We do support the provision which would increase authorizations of funds for established and successful VA programs which help homeless veterans.

If we need to do more, let's provide more funds for the HCMI and Homeless Domiciliary Programs.

We hope that this issue will be addressed on the Senate floor or during House-Senate conference on this bill.

FRANK H. MURKOWSKI.
ALAN K. SIMPSON.
STROM THURMOND.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUN 26 1990

The Honorable Frank H. Murkowski
Ranking Minority Member
Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Senator ~~Murkowski~~ Frank

We understand the Senate may consider adopting a House proposal that would exempt VA's medical care appropriation from sequestration under the Gramm-Rudman-Hollings law.

Much as we understand the move as a reflection of deep concern for maintaining sufficient funding to meet veterans' medical care needs, certain practical considerations cannot be ignored. Total exemption of medical care will force steeper cuts in the remaining VA programs, as well as other domestic and defense programs which also affect veterans and their families. Resolving the deficit problem requires difficult choices, and we only delay the inevitable if we further limit the impact of the Gramm-Rudman-Hollings law.

As it is, most of VA medical care, like other Federal health care programs, is protected by a 2 percent cap on sequestration. That cap serves to recognize the importance of veterans' health programs, and it is only logical that the Department bear its remaining share of responsibility under the law.

Objective analysis of Gramm-Rudman-Hollings shows that if every Department exempted their most critical discretionary appropriation, the remainder of the Federal budget would be decimated by a sequestration, and any semblance of discipline would be lost.

No one is rooting harder against a sequestration than we are, but if one does occur, it will be because Congress failed to meet the legal deadline. A piecemeal amendment of Gramm-Rudman-Hollings should not be part of the plan to head off that possibility.

Sincerely yours,

Ed

Edward J. Derwinski

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

The Honorable Frank Murkowski
Ranking Minority Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

We are writing to tell you of the urgent necessity that the Senate enact S. 2732, the Administration's bill to improve special pay for the recruitment and retention of VA physicians and dentists, and reject S. 2701.

Even on the vital issue of improving recruiting and retention for the professional cadre of physicians and dentists in the VA we cannot afford to commit excessive financial resources. In that connection, the most striking difference between the two bills is their cost. S. 2701 would cost $72.5 million dollars over the first year for its special pay provisions alone. S. 2732 would cost only $39.7 million.

Given the fiscal and economic difficulties facing the Nation, VA does not, and the Senate should not, prefer measures to resolve the Department's problems that are more costly than thorough consideration would justify. S. 2732 was carefully drafted to strike a balance between the needs of VA to recruit and retain qualified physicians and dentists and the need to maintain fiscal responsibility. It represents an increase of 25% in special pay expenditures. On the other hand, S. 2701 would require a remarkable and, in our view, unnecessary increase over current cost of 45%.

One of our most particular concerns is that S. 2701 would provide physicians and dentists an annual entitlement of $1,000 each for continuing education, representing an additional cost, over and above the special pay, of $4 million. If enacted, this guarantee would consume the entire annual Veterans Health Service and Rehabilitation Administration budget for continuing education for all health care professionals.

We believe these significant cost differences alone require defeat of S. 2701 and passage of S. 2732. However, our concerns extend as well to the effect that individual provisions of S. 2701 would have on our Special pay program. Specifically, it contains incentive special pay based on position at a series of fixed amounts, precluding adjustments

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The Honorable Frank Murkowski

based on market conditions, clinical complexity of the position or the qualifications of the physician. The bill would thus deny VA the flexibility of crafting special pay for position to suit the conditions of the marketplace. In fact, it would surely result in special "position" pay in excess of need at specific locations and produce costs that are simply unnecessary to achieve our purpose.

S. 2701 also provides for scarce specialty pay of at least $4,000 to a maximium of $20,000. Again, establishing a minimum amount of special pay, without reference to the market place in which the pay will be paid or the assessment of the VA's need for that specialty will gaurantee that some physicians will receive special pay that, in the VA's view, will exceed their admittedly substantial value to the Department. Paying special pay under these conditions is simply not fiscally responsible.

We also believe that S.2701's approach to special pay for dentists is excessive. The specific levels in S. 2701 for position-based special pay for dentists, in our view, are well above the need. Moreover, the effect of our action in October 1989 to reverse the 1982 "administrative offset" of special pay caused a de facto increase of about 25% in special pay for most VA dentists.

These differences and our overall conviction that the Administration's bill is simply more precisely designed to meet the Department's needs lead us urgently to recommend that the Senate Veteran Affairs Committee amend S. 2701 by substituting the content of S. 2732.

Sincerely yours,

Edward J. Derwinski

EJD/ja

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

JUL 11 1990

The Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As requested, we are providing this report on S. 2701, a bill "To amend title 38, United States Code, to improve the capability of the Department of Veterans Affairs to recruit and retain physicians and dentists through increases in, and modifications of, special pay authorities, and for other purposes." In addition, because of interest shown by the Committee, we will be submitting shortly our comments on H.R. 4557, the House Special Pay bill.

VA agrees that the current special pay statute should be amended to provide greater flexibility in setting appropriate amounts, and to authorize generally higher amounts, of certain types of special pay for physicians and dentists employed by the Veterans Health Services and Research Administration (VHS&RA).

We do not, however, support S. 2701. We urge the Committee to report the Administration's physician pay bill, which would provide VA with greater flexibility to accomplish the goals of S. 2701 at $33 million (45%) less annually. The generally lower amounts in VA's proposed legislation are firmly based on the findings in the Quadrennial Report. We forwarded our proposed legislation to the Senate on July 11, 1990. It has now been introduced as S. 2732.

Physicians and dentists special pay has been a critical factor in the VA's ability to attract and retain a qualified medical work force. Within the past decade, however, as documented in the VA's Quadrennial Report to the President on the Adequacy of Special Pay for physicians and dentists (submitted to the House and Senate Committees on Veterans' Affairs and the Office of Management and Budget in October 1989), the VA's special pay system has not kept pace with changing marketplace conditions. There has been no increase in special pay since 1980. As a result, the VA is now facing a crisis in the recruitment and retention of qualified physicians and dentists, particularly with regard to scarce medical specialties and positions of administrative and managerial responsibility.

In some medical specialty areas, VA lags 33 percent or more behind national pay rates. As a result, VA has been forced to rely increasingly on scarce medical specialty contracts to insure availability of certain specialists. These contracts, traditionally more costly than employment as a means of securing medical services, are becoming increasingly more expensive. At the same time, they serve to conceal the real vacancy rate within those specialties. In addition, although VA's physician work force increased by 14 percent from 1981 to 1988, the increase consisted primarily of a large increase in the number of part-time physicians. A higher percentage of part-time physicians means that VHS&RA must hire more physicians to accomplish the same amount of work, at increased personnel costs. This shift to part-time employment is due in large part to declining ability to compete in the recruitment market for well-qualified physicians. This is particularly true for so-called scarce specialties such as radiology, anesthesiology, and special surgery.

In addition, vacancies for senior physician administrators such as Chiefs of Staff have become increasingly more difficult to fill. Part of the problem is a lack of monetary incentive for VA physicians to accept the added responsibility of these senior positions.

Moreover, the increasing necessity of hiring at higher grades in order to remain competitive has led to the problem of pay "compression," virtually eliminating any career ladder for physicians.

As a result, VA has developed proposed legislation which we believe best addresses these problems. Also, the generally lower amounts in VA's proposed legislation are firmly based on the findings in the Quadrennial Report. We forwarded this proposed legislation to the Senate on June 11, 1990.

S. 2701 would re-establish the special pay provisions in a new subchapter II of chapter 73 of title 38, United States Code (existing subchapter II would be redesignated as subchapter III). Like VA's proposed bill, the Senate bill would revise the special pay statute to provide greater flexibility in setting, and would increase, certain types of physician and dentist special pay. Our comments address those features which differ from VA's proposed legislation or from provisions of current law.

A principal difference between S. 2701, and the VA proposal (as well as current law) is that the Senate bill would eliminate primary special pay. Primary special pay guarantees to all eligible physicians and dentists a minimum amount of special pay, irrespective of the individual's entitlement to special pay under any of the "incentive" categories. Instead,

S. 2701, in new sections 4123 and 4125, places all special pay under what are now incentive special pay categories, i.e., full-time status, tenure, scarce specialty, position of responsibility, board certification, and geographic location. In addition, S. 2701 adds a new category "exceptional qualifications." VA believes that most of the current primary special pay should be reallocated to special pay for tenure. However, we also strongly believe some amount of primary special pay remains necessary to ensure adequate and competitive starting salaries. We prefer the VA draft bill's provision for $2,000 primary special pay which achieves this purpose.

New sections 4123 and 4125 in S. 2701 would increase the special pay under the various incentive categories for physicians and dentists, respectively. The increases are more than the VA proposal would provide, substantially more in some categories. We prefer the lower increases we have proposed which sufficiently meet the need for increased special pay. The increased cost of S. 2701 over FY 1988 for special pay would be $72,512,406 in FY 1991 and each of the subsequent years, for a total five-year cost of $362,562,030. FY 1988 is used as the base year for comparing increased costs with previous estimates used in the VA's Quadrennial Report to the President on the Adequacy of Special Pay for Physicians and Dentists. A copy of the cost estimate is enclosed.

With respect to tenure special pay for physicians, S. 2701 would authorize a range of pay for several subcategories:

S. 2701

$4,000 to $6,000 - 2 to 4 yrs
$6,000 to $12,000 - 4 to 8 yrs
$12,000 to $25,000 over 8 yrs

S. 2701 does not specify any criteria for applying these ranges. This tenure special pay would reward continuing tenure with VA. We note, however, that the VA proposal, which we prefer, allows for more frequent pay increases rewarding continuing tenure and limits the maximum tenure pay to $16,500 annually.

Unlike VA's own proposal, section 4123(b)(3) specifies a minimum amount for scarce specialty incentive pay. Thus, it requires a minimum of $4,000, irrespective of need. VA's proposal includes no such minimum and, thus, it affords greater flexibility to meet actual needs and does not arbitrarily force medical facility directors to under- or overcompensate certain scarce specialities (i.e., if a specialty only requires $2,000).

With respect to special pay based on level of responsibility, S. 2701 departs from current law and VA's proposal and would provide higher amounts of monetary recognition for the Chief Medical Director and the Deputy Chief Medical Director. The Chief Medical Director is now paid at Executive Level III, and the Deputy Chief Medical Director at Executive Level IV. Each receives the maximum special pay of $27,500 per year. VA believes total pay (i.e., basic pay plus special pay) should not exceed the rate of basic pay for Level I of the Executive Schedule (Cabinet Secretaries).

Also, S. 2701 departs from current law and VA's proposal by failing to include Deputy Service Directors. Although some Deputy Service Directors would qualify for position special pay because they are paid at the Executive grade, others who are paid at the Medical Director and Chief grades would not qualify. We prefer the VA proposal.

New sections 4123(b)(7) and 4125(b)(7) would add incentive special pay for "exceptional qualifications" of physicians ($15,000 maximum) and dentists ($5000 maximum), with the personal approval of the Chief Medical Director. This provision was not included in the VA proposal and is not supported by the Department. The proposed increases in pay and expanded flexibility for setting the new pay rates will allow VA to attract and retain qualified physicians and dentists. Thus, special pay for "exceptional qualifications" is unnecessary.

New section 4125(b)(5) of S. 2701 would add authority to pay dentists special pay on the basis of specialty board certification. VA opposes this provision as unnecessary to assure recruitment and retention of dentists. Other elements of special pay, including scarce specialty and geographic area elements, will be sufficient for VA to assure dentist recruitment and retention.

Under S. 2701, part-time physicians and dentists would receive a proportional amount of the full-time rate. In contrast, existing law and the VA proposal provide a proportional amount of statutory part-time rates which are approximately 3/4 of the full-time rate. Furthermore, S. 2701 would authorize special pay for some physicians and dentists employed on a less than one-half time basis. We prefer VA's proposal which we believe is adequate to meet recruitment and retention needs.

Under new section 4127(a)(1), certain physician and dentist managers in VA Central Office receiving special pay on the basis of their Central Office positions would not be eligible for special pay based on scarce specialty. We prefer VA's proposal. We agree that it would be inappropriate to pay scarce specialty pay to physician and dentist managers who are not actually employed as specialists, and that special pay should be paid to them on the basis of their positions. However, there are some problems with the provision. In the first place, it does not apply to all VA Central Office managers, but is limited to Service Directors, Deputy Assistant Chief Medical Directors, Assistant Chief Medical Directors, the Associate Deputy Chief Medical Director, the Deputy Chief Medical Director and the Chief Medical Director. It does not apply to other VA Central Office management officials such as Deputy Service Directors, the Deputy and Assistant Associate Deputy Chief Medical Directors and various staff physicians and dentists. In contrast, VA's proposal applies to more of these positions, but does not contain a blanket prohibition on paying scarce specialty pay to physicians and dentists in VA Central Office. Thus, the VA proposal provides greater flexibility with respect to special pay for these employees. Moreover, this section could serve as a disincentive to those physicians and dentists receiving the maximum scarce specialty pay from accepting VA Central Office management positions. S. 2701 authorizes physician scarce specialty pay as high as $40,000; but, except for the Deputy Chief Medical Director and the Chief Medical Director, this bill authorizes position special pay much less than that amount. Similarly, this bill authorizes dentist scarce specialty pay as high as $20,000; but position pay is much less than that amount.

We note that S. 2701, consistent with VA's proposal, would discontinue the directive of current law to pay the maximum amount of special pay authorized in the special pay statute to the Chief Medical Director and Deputy Chief Medical Director. We favor this added flexibility.

Also, new section 4127(a)(2) of S. 2701 would empower VA to pay scarce specialty pay to a Chief of Staff, but only upon a determination that it is necessary in order to recruit and retain highly qualified physicians and dentists to serve as Chiefs of Staff, and the personal approval of the CMD. VA's proposal provides sufficient flexibility to pay such pay in those infrequent instances where the Chief of Staff actually performs specialist services, in addition to executive duties, and such additional pay is necessary for recruitment and retention. Therefore, we recommend VA's proposal in lieu of this provision, which is unduly restrictive of VA's authority.

Subsection 4127(c) of S. 2701 would provide for a VA medical center director to participate in determinations concerning scarce specialty and geographic location special pay at the director's facility, and for a director's recommendation to become effective unless disapproved within 45 days. Furthermore, only the CMD or a designated line supervisor could disapprove the director's recommendation. We think that VA regulations already adequately provide for VA medical center directors to participate in these determinations: they may recommend to the Chief Medical Director specific categories of physicians for incentive special pay for geographic location when there are extraordinary recruitment or retention problems, and they also may recommend specific medical specialties for incentive special pay for scarce medical specialty. Although physician recruitment and retention may have some minor local variances, we believe that specialty pay is national in nature. We are concerned that this provision may allow inconsistency in rates to develop. As a general rule, we support increased delegation of appropriate authorities to medical center directors; however, we believe that the Department should determine the appropriate level of delegation.

Subsection 4127(d) of S. 2701 would provide that scarce specialty pay may not be paid at a particular VA medical center absent a determination that geographic location special pay is insufficient for recruitment and retention needs. This provision is unnecessary. The authority for the payment of these elements of special pay already require, as a prerequisite, a determination that there is a recruitment and retention need.

Under section 4128 of S. 2701, retirement annuities of incumbent employees retiring on or after October 1, 1990, the bill's effective date, would be computed on the basis of what they would have received under existing law plus (a) 50 percent of the increase under S. 2701 after five years additional service, and (b) the full amount of the increase after ten years additional service. Full-time employees hired on or after October 1, 1990, would need 15 years of service (as under existing law) in order to count special pay in computing their retirement annuities. VA favors continuing the current fifteen year minimum service requirement. We, however, have serious concerns about the potential impact of phasing in retirement credit for the increase in special pay over a 10 year period for employees who are currently eligible or nearing eligibility to retire. Employees who have worked to become eligible to retire this October 1, when they get full credit for their special pay are very unlikely to extend their VA careers another 10 years and make full 7% contributions to the retirement fund during that period. We believe that many such employees will opt to retire sooner, rather than later, as contemplated by this provision. When viewed in comparison to other Federal pay and Executive Pay increases, this requirement is inequitable. We believe the phasing in of retirement credit should be omitted from the bill.

Additionally, section 6 of S. 2701 would provide that employees who, under section 103(b) of Public Law Number 96-330, elected not to have special pay included as basic pay for retirement purposes, have another opportunity to make such an election, and that such election is irrevocable. VA does not favor this provision; we believe that the VA bill provides the necessary incentives to recruitment and retention and that this provision is unnecessary.

Also, new section 4129 of S. 2701 continues existing law concerning on-going review of the adequacy of VA physician and dentist pay and the Quadrennial Report to the President. We recommend that the date for the first required report be extended from December 31, 1992, to 1993, so that VA may have more experience on which to base the report. In addition, new section 4130 of S. 2701 requires an annual report to the House and Senate Committees on Veterans Affairs regarding implementation of the special pay provisions and information concerning staffing and turnover. Among the information VA must provide are summaries of: amounts paid for each category of special pay, geographic areas and scarce specialties, reasons that physicians and dentists leave VA, reasons they change from full-time to part-time employment, reasons for any positions remaining vacant, and data concerning changes from part-time to full-time status. In addition, S. 2701 would require VA to explain any failure to designate a specialty as a scarce specialty where positions in that specialty remain vacant. In general, VA does not oppose these reporting requirements. However, we do object to the requirement to report reasons for not designating specialties as scarce specialties. As section 4123 specifically requires the CMD to base designations of scarce specialty on "extraordinary difficulties in the recruitment and retention of qualified physicians," and the information contained in the annual report includes data on staffing and turnover, we believe this additional requirement is unnecessary.

In addition to the special pay provisions, section 4 of S. 2701, would amend section 4113 of title 38 to authorize reimbursement, up to $1,000 per year, of outside continuing professional education expenses of full-time board certified physicians and dentists, approved under criteria prescribed by the Chief Medical Director. VA opposes this provision. VA already has authority to pay continuing professional education expenses and, we believe, effectively uses the limited resources available for employee training. In addition, VA itself provides high quality continuing professional education to many physicians and dentists, including that provided through the Department's Regional Medical Education Centers.

The Honorable Alan Cranston

The Office of Management and Budget advises that there is no objection from the standpoint of the Administration's program to the submission of this report on S. 2701 to the Congress.

Our cost estimate is enclosed.

Sincerely yours,

Edward J. Derwinski

Enclosure
EJD/gb

MINORITY VIEWS OF SENATORS FRANK H. MURKOWSKI, ALAN K. SIMPSON, STROM THURMOND, ARLEN SPECTER, AND JAMES M. JEFFORDS

EMPLOYMENT SERVICES FOR SEPARATING SERVICEMEMBERS

Section 302 of the Committee bill, Expansion of Employment and Training Information Program, would authorize the Department of Labor to expand the existing Transition Assistance Program (TAP) pilot program. This program provides employment and training information and services to active duty servicemembers facing separation. It was established by section 408 of PL 101-237 and is now limited to ten states.

We believe this section will provide an inadequate response to the job search needs of future veterans. We expect a large reduction in the size of the armed forces. We note that the Senate Armed Services Committee has authorized funding at a level which will support approximately 100,000 fewer servicemembers than in 1990. These servicemembers will become veterans seeking civilian jobs.

No matter how effective, TAP will only be in operation at a limited number of sites. Individuals at others bases would remain unserved. However, the Department of Labor has, funded and in place, a nationwide network of employment services professionals. These Local Veterans Employment Representatives (LVERs) and Disabled Veteran Outreach Program (DVOP) personnel could furnish employment services to separating servicemembers wherever they are found.

The Committee bill should be amended to allow the Department of Labor (DOL) to provide employment services to separating servicemembers up to 180 days prior to their release from active duty.

By providing future veterans with professional assistance in their job search, while they are still on active duty, such an amendment would improve service to veterans. It would also allow DOL to use its resources more efficiently and effectively.

Such authority would offer the double benefit of *improved service* and *cost savings*. If veterans obtain post-separation jobs more quickly, unemployment insurance costs will be reduced and income tax receipts will be increased. Of course, the greatest benefit will be a smoother transition to civilian life for veterans.

Some may be concerned that this additional authority will dilute important and needed services to current beneficiaries. This amendment would not reduce resources available to serve current beneficiaries who would continue to receive the job placement assistance to which they are entitled. In fact, the amendment creates *no new beneficiaries*. These servicemembers will become veterans in any event. They will become part of DOL's workload when they are separated. The amendment allows DOL to serve its existing workload more effectively. *All veterans,* current and future, would be the beneficiaries of this amendment.

This additional authority can be implemented without impairing the TAP program. The only resources which would be used by the authority we seek are the time and expertise of existing staff to serve non-TAP bases.

This authority is strongly supported by the Adminsitration. A similar provision in H.R. 4087 received strong support from veterans' service organizations. These additional views include letters and hearing testimony documenting support for the authority to provide these services.

The Department of Labor has asked for authority to use this resource. They state they can provide these services with existing resoures. We believe they should have the opportunity to do so.

FRANK H. MURKOWSKI.
ALAN K. SIMPSON.
STROM THURMOND.
ARLEN SPECTER.
JAMES M. JEFFORDS.

U.S. DEPARTMENT OF LABOR
SECRETARY OF LABOR
WASHINGTON, D.C.

JUL 11 1990

The Honorable Frank Murkowski
United States Senate
Washington, DC 20510

Dear Frank:

I am pleased to support your Transition Assistance Amendment which will be offered to S. 2100, the omnibus veterans' bill. The Administration would like to provide employment and training assistance to soldiers who have served their country and are about to be discharged from the service. As you know, Senator Thurmond introduced the Administration bill, similar to your amendment, which would allow expansion of the Transition Assistance pilot program. In a similar program, offered by the State of California, soon-to-be veterans who received employment and training assistance were usually employed more quickly and at higher salaries then those veterans who had not received this training.

Your amendment would give our office of Veterans' Employment and Training (VETS) the flexibility to expand the Transition Assistance Program (TAP) beyond its current pilot program and do so in an effectively planned manner, taking into account the services that may be helpful during Department of Defense (DOD) force restructuring. Therefore, we wholeheartedly support your amendment revising the provisions in the law to allow Disabled Veterans Outreach Program (DVOP) and Local Veterans Employment Representatives' (LVER) staff to serve members of the Armed Forces who are within 180 days of discharge.

I would hope that your transition assistance amendment is adopted over the bill's current language because the current transition assistance provision places cumbersome and prohibitive restrictions on the Secretary of Labor's ability to plan effectively for the DOD force restructuring. The additional required administrative determinations found in S. 2100 could have the unintended effect of delaying expansion of TAP when it may be needed the most to meet the needs of soon-to-be separated members of the Armed Forces.

The adoption of your amendment will allow the Departments of Labor, Defense and Veterans' Affairs to efficiently and effectively serve soon-to-be veterans.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

With my warmest regards,

Sincerely,

Elizabeth

Elizabeth Dole

U.S. DEPARTMENT OF LABOR
SECRETARY OF LABOR
WASHINGTON, D.C.

APR 23 1990

The Honorable Dan Quayle
President
United States Senate
Washington, D.C. 20510

Dear Mr. President:

I am pleased to enclose for the consideration of Congress a draft bill entitled the "Veterans' Employment and Training Amendment of 1990."

The draft bill would expand the definition of "eligible veteran" in Section 2001 of Title 38 U.S.C. for the purpose of providing services to military service personnel who have substantially completed their period of active service and have decided to leave the military for civilian careers. Under the proposal, such personnel who are within 90 days of separation could be provided a variety of veterans' employment and training services. We expect that the provision of such services in the period prior to separation would enhance the transition of valued military service members into the civilian economy and reduce the reliance on Unemployment Compensation for Ex-Servicemembers (UCX).

We would point out that Congress recently enacted the "Veterans Benefits Amendments of 1989"(Public Law 101-237) which includes a provision for the Secretary of Labor to establish a three year pilot program, in at least five but not more than ten states, to furnish employment and training information and services to military personnel who are within 180 days of their separation. We believe that it is important to provide employment services to all separating military service personnel and not be restricted to just a few states. In so doing, we can coordinate our proposal with the existing demonstration authority and services currently provided to veterans. This can be accomplished within existing budgetary resources.

We urge that this bill receive prompt and favorable consideration.

The Office of Management and Budget advises that there is no objection to transmittal of the draft bill to Congress from the standpoint of the Administration's program.

Sincerely,

Elizabeth Dole

Elizabeth Dole

Enclosure

The
American
Legion

For God and Country

★ WASHINGTON OFFICE ★ 1608 "K" STREET, N.W. ★ WASHINGTON, D.C. 20006 ★
(202) 861-2700 ★

July 11, 1990

Honorable Frank H. Murkowski
United States Senate
SH-709 Hart Senate Office Building
Washington, DC 20510-0202

Dear Senator:

The American Legion advocates the use of Local Veteran Employment Representatives (LVERs) and Disabled Veterans Outreach Program specialists (DVOPs) to render transitional employment assistance to those active duty personnel preparing to separate from active duty under conditions other than dishonorable. The Legion would support the necessary changes to Title 38 of the United State Code which would extended LVER and DVOP duties and responsibilities to include this special category of "soon-to-be" veterans.

Enclosed is a copy of a resolution, which addresses this issue, passed by The American Legion at its 71st National Convention in Baltimore last fall.

Sincerely,

Steve A Robertson

Steve A. Robertson, Assistant Director
National Legislative Commission

Enclosure

SEVENTY-FIRST NATIONAL CONVENTION
OF
THE AMERICAN LEGION
BALTIMORE, MARYLAND
SEPTEMBER 5, 6, 7, 1989

RESOLUTION NO: 102

SUBJECT: BASIC SKILLS PILOT PROGRAMS PRIOR TO SEPARATION FROM MILITARY SERVICE

WHEREAS, Approximately 200,000 service people leave the military services each year and seek employment in civilian occupations; and

WHEREAS, A very high percentage of this group does not have the basic skills and knowledge needed in order to conduct a successful job search; and

WHEREAS, There are two successful pilot programs presently being conducted specifically for the purpose of teaching necessary skills such as resume writing and job interview techniques; and

WHEREAS, This employment related program should be conducted when needed most -- just prior to separation from the service; and

WHEREAS, These programs are absolutely essential to make a smooth transition into the civilian labor force; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Baltimore, Maryland, September 5, 6, 7, 1989, that The American Legion hereby urge the Congress of the United States to enact legislation to establish a permanent pre-separation employment program at all military discharge facilities, which will be staffed in cooperation with the Department of Labor's Employment and Training Service personnel; this program to commence for separatees not more than 90 days nor less than 60 days prior to discharge; and be it further

RESOLVED, that we request the Assistant Secretary for Veterans Employment and Training (ASVET) to make a concentrated effort to coordinate with the Department of Defense in order to expand these programs to all military installations throughout the country.

VETERANS OF FOREIGN WARS OF THE UNITED STATES

OFFICE OF THE DIRECTOR

July 11, 1990

The Honorable Frank M. Murkowski
Ranking Minority Member
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Senator Murkowski:

On behalf of the more than 2.2 million men and women of the Veterans of Foreign Wars, I wish to take this opportunity to express our support for your amendment to S. 2100 that would expand the duties of Veterans' Outreach Program Specialists (DVOPs) and Local Veterans' Employment Representatives (LVERs) so they may provide employment and training information and services to members of the Armed Forces on active duty who are within 180 days of discharge or release from active duty.

As you know, Public Law 101-237 directed the Department of Labor, VA and DOD to set up a pilot program to provide assistance to these individuals; however, the DVOPs and LVERs are currently not explicitly authorized to serve those who are still on active duty. Your amendment, which we understand is identical to a provision contained in the House passed bill—H.R. 4087, would rectify this problem by expanding the authority of these specialists under sections 2003A and 2004 of title 38. The VFW believes the enactment of your amendment is crucial to the success of the pilot program. In supporting your amendment, the VFW fully expects the program to be provided with adequate funding and FTEE in order to successfully carry out this expanded responsibiltiy.

Sincerely,

James N. Magill

JAMES N. MAGILL, Director
National Legislative Service

AMVETS
National Headquarters
[illegible]
(301) 459-9600

102/00/254

July 11, 1990

The Honorable Frank Murkowski
United States Senate
Washington, DC 20510-0202

Dear Senator Murkowski:

AMVETS is extremely supportive of your intentions to introduce an amendment to S.2100 that would provide the services of the DVOPs and LVERs to those active duty members of the armed forces who are within 180 days of discharge.

As you are aware, we supported this legislative initiative during our testimony on April 25, 1990, before the Subcommittee on Education, Training and Employment.

If you have any questions or if we may assist you in any way, please feel free to contact my office at your convenience.

Sincerely,

Noel C Woosley

Noel C. Woosley
National Service Director

NCW/hes

NCOA

Non Commissioned Officers Association of the United States of America

225 N. Washington Street • Alexandria, Virginia 22314 • Telephone (703) 549-0311

July 10, 1990

The Honorable Frank Murkowski
Ranking Minority Member
  Committee on Veterans' Affairs
SR-414 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Murkowski:

Per your request for a clarification of NCOA's position on extending DVOP/LVER counseling services to separating servicemembers. The Association would fully support allowing such services to members during their final six (6) months of service. This would ease transition during force reductions, and is consistent with provisions of other transition bills NCOA is supporting.

Thank you, for consulting NCOA on this issue and for your continuing support of our military and veterans community.

Sincerely,

Tom Ry

Tom L. Ryan
Director for State/Veterans Affairs

TLR/kp

CHANGES IN EXISTING LAW MADE BY S. 2100 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 26—UNITED STATES CODE

* * * * * * *

Subtitle F—Procedure and Administration

* * * * * * *

CHAPTER 61—INFORMATION AND RETURNS

* * * * * * *

SUBCHAPTER B—MISCELLANEOUS PROVISIONS

* * * * * * *

§ 6103. Confidentiality and disclosure of returns information

(a) * * *

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***(l)* Disclosure of returns and return information for purposes other than tax administration.—**

(1) * * *

* * * * * * *

(7) Disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of [1977.—] ***1977 or to the Department of Veterans Affairs.—***

(A) Return information from Social Security Administration.—The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from Internal Revenue Service.—The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure.—The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibity for, or correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies.—The programs to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act.

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands;

(v) unemployment compensation provided under a State law described in section 3304 of this title;

(vi) assistance provided under the Food Stamp Act of 1977; **[**and**]**

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under 212(a) of Public Law **[**93-66).**]** *93-66); and*

(viii)(I) any needs-based persion provided under chapter 15 of title 38, United States Code, or any other law administered by the Department of Veterans Affairs;

(II) parents' dependency and indemnity compensation provided under section 415 of title 38, United States Code;

(III) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of title 38, United States Code; and

(IV) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total; except that, in such cases, only wage and self-employment information may be disclosed.

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TITLE 38—UNITED STATES CODE

* * * * * * *

PART I—GENERAL PROVISIONS

* * * * * * *

CHAPTER 1—GENERAL

* * * * * * *

§ 113. Treatment of certain programs under sequestration procedures

(a) * * *

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(b) The following accounts of the Veterans' Administration shall be exempt from sequestration or reduction under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) or any other sequestration law and shall not be included in any report specifying reductions in Federal spending:

(1) The following life insurance accounts:

(A) The National Service Life Insurance Fund authorized by section 720 of this title.

(B) The Service-Disabled Veterans Insurance Fund authorized by section 722 of this title.

(C) The Veterans Special Life Insurance Fund authorized by section 723 of this title.

(D) The Veterans Reopened Insurance Fund authorized by section 725 of this title.

(E) The United States Government Life Insurance Fund authorized by section 755 of this title.

(F) The Veterans Insurance and Indemnity appropriation authorized by section 719 of this title.

(2) The following revolving fund accounts:

(A) The Veterans' Administration Special Therapeutic and Rehabilitation Activities Fund established by section 618(c) of this title.

(B) The Veterans' Canteen Service revolving fund authorized by section 4204 of this title.

(3) Notwithstanding any other provision of law, the following appropriation account: Veterans Health Services and Research Administration, Medical Care (36-0160-0-1-703), including administrative expenses incurred by the Department.

* * * * * * *

CHAPTER 3—VETERANS' ADMINISTRATION; OFFICERS AND EMPLOYEES

* * * * * * *

SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

210. Appointment and general authority of Administrator; Deputy Administrator

211. Decisions by Administrator; opinion of Attorney General.
212. Delegation of authority and assignment of duties.
213. Contracts and personal services.
214. Reports to the Congress.
215. Publication of laws relating to veterans.
216. Assistance to certain rehabilitation activities.
217. Studies of rehabilitation of disabled persons.
218. Security and law enforcement on property under the jurisdiction of the Veterans' Administration.
219. Evaluation and data collection.
220. Coordination and promotion of other programs affecting veterans and their dependents.
221. Advisory Committee on Former Prisoners of War.
222. Advisory Committee on Women Veterans.
223. Advisory Committee on Prosthetics and Special-Disabilities Programs.
[223.] *224.* Rulemaking: procedures and judicial review.
[224.] *225.* Administrative settlement of tort claims.

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SUBCHAPTER II—ADMINISTRATOR OF VETERANS' AFFAIRS

§ 210. Appointment and general authority of administrator; Deputy Administrator

(a) * * *

* * * * * * *

(b)(1) * * *

* * * * * * *

(2)(A) The Administrator may not in any fiscal year implement an administrative reorganization described in subparagraph (B) of this paragraph unless the Administrator first submits to the appropriate committees of the Congress a report containing a detailed plan and justification for the administrative reorganization. Any such report shall be submitted not later than [the day on which the President, pursuant to section 1105 of title 31, submits to the Congress the Budget for] *April 1 of the year preceding* the fiscal year in which the administrative reorganization is to be implemented. No action to carry out such reorganization may be taken after the submission of such report until the first day of such fiscal year.

* * * * * * *

(D) Subparagraphs (A), (B), and (C) shall not apply to any administrative reorganization at a Department of Veterans Affairs medical and regional office center if there is no reduction in the number of full-time equivalent employees employed at that center below the number of such employees employed at that center in the fiscal year immediately preceding the fiscal year in which the administrative reorganization is to be implemented.

[(D)] *(E)* For the purposes of this paragraph—

(i) The term "administrative reorganization" means a consolidation, elimination, abolition, or redistribution of functions under the authority granted the Administrator under the second sentence of paragraph (1) of this subsection.

(ii) The term "covered Central Office unit" means an office in the Veterans' Administration's Central Office that is the permanent duty station for 100 or more employees.

(iii) The term "covered field office or facility" means a [Veterans' Administration] *Department of Veterans Affairs* office or facility outside the [Veterans' Administration] *Department of Veterans Affairs* Central Office that is the permanent duty station for 25 or more employees [or] *and* that is a [freestanding outpatient clinic.] *regional office, medical center, medical and regional office center, freestanding outpatient clinic, insurance center, or similar field office or facility which has as its primary mission providing care or services to veterans.*

* * * * * * *

§ 218. Security and law enforcement on property under the jurisdiction of the Veterans' Administration

(a)(1) * * *

* * * * * * *

(f) The Secretary may not delegate the functional and technical supervision of the performance of security and law enforcement functions under this section to any official outside the Office of the Secretary.

* * * * * * *

§ 223. Advisory Committee on Prosthetics and Special-Disabilities Programs

(a)(1) The Secretary shall establish an advisory committee to be known as the Advisory Committee on Prosthetics and Special-Disabilities Programs (hereinafter in this section referred to as the "Committee").

(2) The members of the Committee shall be appointed by the Secretary and shall include—

(A) appropriate representatives of veterans who use prosthetic devices;

(B) individuals who are recognized experts in the fields of prosthetics engineering;

(C) individuals engaged in prosthetics research;

(D) individuals engaged in rehabilitative medicine;

(E) individuals engaged in the clinical treatment of individuals who are users of prosthetic devices;

(F) individuals engaged in clinical treatment in the Department's special-disabilities programs; and

(G) such other individuals with pertinent expertise or experience as the Secretary may determine appropriate.

(3) The Committee may also include, as ex officio members, individuals appointed from the Department.

(4) The Secretary shall determine the total number, terms of service, and pay and allowances of members of the Committee appointed by the Secretary, except that the term of office of any such member may not exceed three years.

(b)(1) It shall be the function of the Committee to advise the Secretary and the Chief Medical Director on all matters related to—

(A) prosthetics and special-disabilities programs administered by the Secretary;

(B) the coordination of programs of the Department for the development and testing of, and for information exchange regarding, prosthetic devices;

(C) the coordination of Department and non-Department programs that involve the development and testing of prosthetic devices; and

(D) the adequacy of funding for the prosthetics and special-disabilities programs of the Department.

(2) The Secretary shall, on a regular basis, consult with and seek the advice of the Committee on the matters described in paragraph (1) of this subjection.

(c) Not later than January 15 of 1991, 1992, and 1944, the Committee shall submit to the Secretary and the Committees on Veterans Affairs' of the Senate and the House of Representatives a report on the effectiveness of the prosthetics and special-disabilities programs administered by the Secretary during the preceding fiscal year. Not more than 30 days after the date on which any such report is received by the Secretary, the Secretary shall submit a report to such committees commenting on the report of the advisory committee.

(d) As used in this section, the term "special-disabilities programs" includes all programs administered by the Department for spinal-cord-injured veterans, blind veterans, veterans who have lost or lost the use of extremeties, hearing-impaired veterans, and other veterans with serious incapacities in terms of daily life functions.

[§ 223.] *§ 224.* **Rulemaking: procedures and judicial review**

(a) In applying section 552(a)(1) of title 5 to the Veterans' Administration, the Administrator shall ensure that subparagraphs (C), (D), and (E) of that section are compiled with, particularly with respect to opinions and interpretations of the General Counsel.

(b) The provisions of section 553 of title 5 shall apply, without regard to subsection (a)(2) of that section, to matters relating to loans, grants, or benefits under a law administered by the Administrator.

(c) An action of the Administrator to which section 552(a)(1) or 553 of title 5 (or both) refers (other than an action relating to the adoption or revision of the schedule of ratings for disabilities adopted under section 355 of this title) is subject to judicial review. Such review shall be in accordance with chapter 7 of title 5 and may be sought only in the United States Court of Appeals for the Federal Circuit. However, if such review is sought in connection with an appeal brought under the provisions of chapter 72 of this title, the provisions of that chapter shall apply rather than the provisions of chapter 7 of title 5.

[§ 224.] *§ 225.* **Administrative settlement of tort claims**

(a) Notwithstanding the limitations contained in section 2672 of title 28, the Administrator may settle any claim for money damages against the United States cognizable under section 1346(b) or 2672 of title 28 or section 4116 of this title to the extent the authority to do so is delegated to the Administrator by the Attorney General. Such delegation may not exceed the authority delegated by the Attorney General to United States attorneys to settle claims for money damages against the United States.

(b) For purposes of this subsection, the term "settle", with respect to a claim, means consider, ascertain, adjust, determine, and dispose of the claim, whether by full or partial allowance or by disallowance.

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PART II—GENERAL BENEFITS

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CHAPTER 11—COMPENSATION FOR SERVICE-CONNECTED DISABILITY OR DEATH

* * * * * * *

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

310. Basic entitlement.
311. Presumption of sound condition.
312. Presumptions relating to certain diseases and disabilities.
312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents.
313. Presumptions rebuttable.
314. Rates of wartime disability compensation.
315. Additional compensation for dependents.

* * * * * * *

SUBCHAPTER II—WARTIME DISABILITY COMPENSATION

* * * * * * *

§ 312. Presumptions relating to certain diseases and disabilities

(a) * * *

* * * * * * *

(c)(1) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, a disease specified in paragraph (2) of this subsection becoming manifest in a radiation-exposed veteran [to a degree of 10 percent or more within the presumption period (as specified in paragraph (3) of this subsection)] shall be considered to have been incurred in or aggravated during the veteran's service on active duty, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) The diseases referred to in paragraph (1) of this subsection are the following:

(A) Leukemia (other than chronic lymphocytic leukemia).
(B) Cancer of the thyroid.
(C) Cancer of the breast.
(D) Cancer of the pharynx.
(E) Cancer of the esophagus.
(F) Cancer of the stomach.
(G) Cancer of the small intestine.
(H) Cancer of the pancreas.
(I) Multiple myeloma.

(J) Lymphomas (except Hodgkin's disease).

(K) Cancer of the bile ducts.

(L) Cancer of the gall bladder.

(M) Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(N) Cancer of the salivary gland.

(O) Cancer of the urinary tract.

[(3) The presumption period for purposes of paragraph (1) of this subsection is the 40-year period beginning on the last date on which the veteran participated in a radiation-risk activity, except that such period shall be the 30-year period beginning on that date in the case of leukemia (other than chronic lymphocytic leukemia).]

[(4)] *(3)* For the purposes of this subsection:

(A) the term "active duty" includes active duty for training and inactive duty for training.

[(A)] *(B)* The term "radiation-exposed veteran" means [a veteran] *an individual* who, while serving on active duty, participated in a radiation-risk activity.

[(B) *(C)* The term "radiation-risk activity" means any of the following:

(i) Onsite participation in a test involving the atmospheric detonation of a nuclear device.

(ii) The occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946.

(iii) Internment as prisoner of war in Japan (or service on active in Japan immediately following such internment) during World War II which (as determined by the Administrator) resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans described in clause (ii) of this subparagraph.

(d)(1) For the purposes of section 310 of this title, and subject to the provisions of section 313 of this title, a disease specified in paragraph (2) of this subsection becoming manifest as specified in such paragraph in a veteran who, during active military, naval, or air service, served in Vietnam during the Vietnam era shall be considered to have been incurred in or aggravated by such service in Vietnam notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) The diseases referred to in paragraph (1) of this subsection are the following:

(A) Non-Hodgkin's lymphoma becoming manifest to a 10-percent degree of disability or more.

(B) Each soft-tissue sarcoma becoming manifest to a 10-percent degree of disability or more other than osteosarcoma, condrosarcoma, Kaposi's sarcoma, or mesothelioma.

(C) Chloracne or another acneform disease consistent with chloracne becoming manifest to a 10-degree of disability or more within one year after the last date on which the veteran performed active military, naval, or air service in Vietnam during the Vietnam era.

§ 312A. Presumption of service connection for diseases associated with effects of exposure to certain herbicide agents

(a) In General.—(1) For the purposes of section 310 of this title, and subject to section 313 of this title, in the case of a Vietnam veteran who, during Vietnam service, was exposed to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid or to any other herbicide agent, each disease (if any) listed in regulations prescribed by the Secretary in accordance with this section and identified in such regulations as having positive association with the biological effect of exposure to such herbicide agent shall be considered to have been incurred in or aggravated by such service, notwithstanding that there is no record of evidence of such disease during the period of such service.

(2) For the purposes of this subsection, a veteran who performed Vietnam service and has a disease referred to in paragraph (1) of this subsection shall be presumed to have been exposed during such service to an herbicide agent containing dioxin or 2,4-dichlorophenoxyacetic acid, and may be presumed to have been exposed during such service to any other chemical compound in an herbicide agent, unless there is affimative evidence to establish conclusively that the veteran was not exposed to any such agent during such service.

(3) The Secretary may extend the applicability of paragraph (1) of this subsection to the case of any veteran who, during the performance of active military, naval, or air service outside Vietnam, was exposed to an agent of the same type as the herbicide agent referred to in paragraph (1) of this subsection.

(b) Diseases To Be Prescribed in Regulations.—(1) Whatever the Secretary determines pursuant to this section that there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam, the Secretary shall prescribe regulations listing each disease having such positive association. In the case of each disease listed in the regulations, the Secretary shall identify the herbicide agent that causes the biological effects with which the disease has positive association. After the Secretary prescribes regulations pursuant to this paragraph, the Secretary shall periodically revise such regulations, as appropriate, to reflect determinations periodically made pursuant to paragraph (2) of this subsection.

(2) The Secretary shall periodically (not less often than biennially)—

(A) determine whether any disease not listed in regulations under this section has positive association with such effects; and

(B) determine whether any disease listed in such regulations does not have positive association with such effects.

(3) The Secretary shall make determinations for the purpose of this subsection on the basis of reports received by the Secretary from a contract scientific organization pursuant to this section and all other relevant scientific evidence, information, or analyses available to the Secretary at the time of the determinations.

(c) Utilization of Contract Scientific Organization.—In prescribing and revising regulations for the purposes of subsection (b), the Secretary shall obtain, by contract, the determinations and esti-

mates of a contract scientific organization as provided in this section.

(d) Required Activities of Contract Scientific Organizations.—(1) Each contract entered into under subsection (c) of this section shall provide for a contract scientific organization—

(A) to determine, in the case of each herbicide agent—

(i) which diseases (if any) have positive association with the biological effects of exposure to such agent, including specifically effects involving porphyrin synthesis, nervous system function, immune function, reproduction, and birth defects, and psychological and psychiatric effects;

(ii) which diseases (if any) have limited positive association with such biological effects;

(iii) which diseases (if any) have insubstantial association with such biological effects; and

(iv) to the extent practicable, the biological basis for the positive, limited positive, and insubstantial associations of diseases referred to in subclauses (i), (ii), and (iii) of this clause with such biological effects; and

(B) to estimate the extent of the association between each such disease and such biological effects using methods as quantitative and as objective as the relevant available data permit.

(2) The contract scientific organization shall specifically determine whether there is positive, limited positive, or insubstantial association between the biological effects referred to in paragraph (1) of this subsection and the following diseases:

(A) Lung cancer.

(B) Each other cancer.

(e) Required Provisions for First Contract.—(1) The first contract entered into under subsection (c) of this section shall provide for the contract scientific organization—

(A) to conduct as comprehensive a survey and evaluation as is practicable of the completed and ongoing scientific studies of, and other scientific evidence or information regarding, the effects that herbicide agents have on humans or other animals that have been exposed to such agents; and

(B) make its determinations and estimates on the basis of the results of such survey and evaluation.

(2) The contract scientific organization shall conduct the survey and evaluation referred to in paragraph (1)(A) of this subsection through a panel composed of recognized experts in toxicology, medicine, epidemiology, statistics, biochemistry, and related fields. The conduct of such survey shall be subject to appropriate peer review.

(f) Required Contract Provisions Relating to Periodic Determinations of the Secretary.—A contract entered into under subsection (c) of this section in connection with the Secretary's periodic determinations under subsection (b)(2) of this section shall require a contract scientific organization—

(1) to conduct as comprehensive a survey and evaluation as is practicable of the scientific studies, evidence, and information referred to in subsection (e)(1)(A) of this section that have become available since the last such survey and evaluation under this section; and

(2) make its determinations and estimates on the basis of the results of such survey and evaluation and all other surveys and evaluations conducted for the purposes of this section.

(g) Reports of Contract Scientific Organizations.—(1) Each contract scientific organization making determinations and estimates under this section shall transmit to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives a written report regarding its determinations and estimates.

(2) Each report shall contain—

(A) the name of each disease (if any) determined to have positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

(B) the name of each disease (if any) determined to have limited positive association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent;

(C) the name of each disease (if any) determined to have in substantial association with the biological effects of exposure to an herbicide agent in Vietnam and the identity of such agent; and

(D) with respect to each disease named pursuant to clauses (A), (B), and (C) of this paragraph—

(i) a discussion of the biological basis for the association;

(ii) the contract scientific organization's estimate of the statistical significance of the association;

(iii) the contract scientific organization's estimate of the relative risk for such disease in veterans who, during Vietnam service, were exposed to an herbicide agent; and

(iv) the probability that the estimates referred to in subclauses (ii) and (iii) are correct.

(3) Estimates and probabilities are not required under clauses (ii), (iii), and (iv) of paragraph (2)(D) of this subsection when the available data do not permit meaningful estimates and probabilities.

(4)(A) If a contract scientific organization determines that a disease has positive association with the biological effects of exposure to an herbicide agent used in Vietnam, such organization shall determine whether there is a reasonable basis for concluding that a Vietnam veteran with the highest level of exposure to that herbicide agent in Vietnam was exposed to such agent under the circumstances necessary for such biological effects.

(B) If a contract scientific organization determines that there is no such reasonable basis, the organization shall state that determination in a report under this scientific and include in such report—

(i) a description of the evidence that supports such determination;

(ii) a description of the evidence (if any) that supports alternative conclusions; and

(iii) a full discussion of the organization's reasons for such determination, including a discussion of the reasons for the organization's determination that the evidence referred to in clause (i) of this subparagraph outweighs the evidence (if any) referred to in clause (ii) of this subparagraph.

(C) A determination with respect to reasonable basis is not required under subparagraph (A) of this paragraph when the available data do not permit a meaningful determination.

(5) The first report under this subsection shall be transmitted to the Secretary and the Committees on Veterans' Affairs of the Senate and the House of Representatives on or before the date one year after the date of the enactment of the Veterans' Agent Orange Exposure and Vietnam Service Benefits Act of 1990.

(h) ACTIONS OF THE SECRETARY AFTER RECEIVING THE FIRST REPORT.—(1) Not later than 60 days after the date on which the Secretary receives the first report under subsection (g) of this section, the Secretary shall—

(A) for the purpose of subsection (b)(1) of this section—

(i) determine in accordance with subsection (b)(3) of this section whether there is positive association between any disease and the biological effects of exposure to an herbicide agent in Vietnam; and

(ii) if so, issue proposed regulations listing each such disease and specifying such agent;

(B) transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the scientific basis for including each disease listed in such proposed regulations, and

(C) if any disease listed in the first report under subsection (g) of this subsection as having positive association is not listed in such proposed regulations—

(i) include in the report to the Committees on Veterans' Affairs the scientific basis for not including that disease in the proposed regulations; and

(ii) publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite the report under subsection (g) and include in such notice a discussion of such scientific basis.

(2) Not later than 60 days after the date on which the Secretary issues any proposed regulations pursuant to paragraph (1) of this subsection, the Secretary shall issue final regulations under subsection (b) of this section. Such regulations shall be effective on the date of issuance.

(i) ACTIONS OF THE SECRETARY AFTER RECEIVING A PERIODIC REPORT.—(1) Upon receiving a contract scientific organization's report after a periodic survey and evaluation conducted for the purpose of subsection (b)(2) of this section, the Secretary shall—

(A) determine in accordance with subsection (b)(3) of this section whether—

(i) any disease named in such report not listed in regulations under subsection (b) of this section has positive association with the biological effects of exposure to an herbicide agent in Vietnam; and

(ii) any disease listed in such regulations does not have positive association with such effects; and

(B) promptly transmit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report containing the Secretary's determinations under clause (A) of this paragraph and the scientific bases for such determinations.

(2)(A) Not later than 60 days after transmitting a report to the Committees on Veterans' Affairs under paragraph (1)(B) of this subsection, the Secretary shall prescribe or revise regulations, as the case may ~~be,~~ pursuant to subsection (b) of this section as may be necessary to reflect the Secretary's determinations included in that report. The regulations or revisions of regulations, as the case may be, shall take effect 30 days after the date on which the Secretary issues the proposed regulations or revisions, as the case may be.

(B) If any disease listed in a periodic report under subsection (g) of this section as having positive association is not listed in such regulations or revisions of regulations, as the case may be, the Secretary shall, not later than 60 days after transmitting a report under subparagraph (A) of this paragraph, publish in the Federal Register a notice that such disease is not listed in the proposed regulations despite such report and include in such notice a discussion of the scientific basis for not including that disease in such regulations or revisions.

(j) EFFECT OF REMOVAL OF DISEASE FROM REGULATIONS.—Whenever a disease is removed from regulations pursuant to paragraph (2) of subsection (i) of this section as a result of a determination under paragraph (1)(A)(ii) of such subsection—

(1) any veteran who was awarded compensation for such disease on the basis of the presumption provided in subsection (a) of this section before the effective date of the removal shall continue to be entitled to receive compensation on such basis; and

(2) any survivor of a veteran who was awarded dependency and indemnity compensation for the death of a veteran resulting from such disease on the basis of such presumtion shall continue to be entitled to receive dependency and indemnity compensation of such basis.

(k) LIMITATION ON CONTRACT AUTHORITY.—The contract authority provided in this section shall be effective for a fiscal year to such extent or in such amount as is provided for in an appropriation Act.

(l) TERMINATION OF EFFECTIVENESS OF THIS SECTION.—(1) Subsections (b) through (i) and (k) of this section shall cease to be effective 10 years after the first day of the fiscal year in which a contract scientific organization transmits to the Secretary the first report under subsection (g) of this section.

(2) Paragraph (1) of this section shall not affect the continued effectiveness of—

(A) subsection (a) of this section and the regulations referred to in such subsection; and

(B) subsection (j) of this section.

(m) DEFINITIONS.—For the purposes of this section:

(1) The term "Vietnam veteran" means a veteran who performed Vietnam service.

(2) The term "Vietnam service" means active military, naval, or air service in Vietnam during the Vietnam era.

(3) The term "herbicide agent" means an agent in an herbicide used in support of United States and allied military operations in Vietnam during the Vietnam era.

(4) The term "biological effect", with respect to exposure to an herbicide agent, means—

(A) each known biological effect of such exposure on humans, including those biological effects resulting from relevant host and environmental factors; and

(B) each bilogical effect of such exposure on humans that it is reasonable to infer on the basis of the known biological effect of such exposure on appropriate animal models.

(5) The term "positive", with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence for the association is equal to or outweighs the credible evidence against the association.

(6) The term "limited positive", with respect to association between a disease and the biological effects of exposure to an herbicide agent in Vietnam, means that the credible evidence against the association outweighs the credible evidence for the association but that there is substantial credible evidence for the association.

(7) the term "insubstantial", with respect to association between a disease and the biological effect of exposure to an herbicide agent in Vietnam, means that there is some credible evidence for the association but the evidence is not substantial.

(8) The term "relative risk", with respect to a report of a contract scientific organization for the purposes of subsection (g) of this section shall have the meaning determined by such organization and specified in such report.

(9) The term "contract scientific organization", with respect to a contract under this section, means—

(A) the National Academy of Sciences; or

(B) in the event that the Secretary determines that the National Academy of Sciences is unwilling to enter into such contract, any other appropriate private nonprofit scientific organization which has appropriate expertise and has no connection with the Department of Veterans Affairs and which the Secretary identifies to the Committees on Veterans' Affairs of the Senate and the House of Representatives in a written notification received by such committees at least 90 days before the date on which such contract is entered into.

§ 313. Presumptions rebuttable

(a) Where there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases within the purview of section 312 *or 312A* of this title, has been suffered between the date of separation from service and the onset of any such diseases, or the disability is due to the veteran's own willful misconduct, service-connection pursuant to section 312 *or 312A* of this title will not be in order.

(b) Nothing in section 312 *or 312A* of this title or subsection (a) of this section shall be construed to prevent the granting of service-connection for any disease or disorder otherwise shown by sound judgement to have been incurred in or aggravated by active military, naval, or air service.

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SUBCHAPTER VI—GENERAL COMPENSATION PROVISIONS

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§ 355. Authority for schedule for rating disabilities

(a) The [Administrator] *Secretary* shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent, and total 100 percent.

(b) The [Administrator] *Secretary* shall from time to time readjust this schedule of ratings in accordance with experience.

(c) In making a readjustment under subsection (b) of this section, the Secretary may provide that the readjustment shall not have the effect of reducing any ratings in effect on the date that the readjustment takes effect.

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CHAPTER 17—HOSPITAL NURSING HOME, DOMICILIARY, AND MEDICAL CARE

SUBCHAPTER I—GENERAL

Sec.
601. Definitions.
602. [Presumption relating to psychosis.] *Special provisions relating to mental illness disabilities.*
603. Contracts for hospital care medical services in non-Veterans' Administration facilities.

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

610 Eligibility for hospital, nursing home, and domiciliary care.
611. Care during examination and in emergencies.
612. Eligibility for outpatient services.
612A. Eligiblity for readjustment counseling and related mental health services.
612B. Counseling for former prisoners of war.
613. Medical care for survivors and dependents of certain veterans.
614. Fitting and training in use of prosthetic appliances; seeing-eye dogs.
[615. Tobacco for hospitalized veterans.]
616. Hospital care by other agencies of the United States.
617. Home health services; invalid lifts and other devices.
618. Therapeutic and rehabilitative activities.
618A. Compensated work therapy and therapeutic residence pilot program.
619. Repair or replacement of certain prosthetic and other appliances.
620. Transfers for nursing home care; adult day health care.
620A. Treatment and rehabilitation for alcohol or drug dependence of abuse disabilities.
620B. Respite care.
620C. [REPEALED.]

620D. Noninstitutional alternatives to nursing home care; pilot program.

*   *   *   *   *   *   *

SUBCHAPTER I—GENERAL

§ 601. Definitions

For the purposes of this chapter—

(1) * * *

*   *   *   *   *   *   *

(6) The term "medical services" includes, in addition to medical examination, treatment, and rehabilitative services—

(A)(i) surgical services, *(ii) services to achieve pregnancy in a veteran or a veteran's spouse when such services are necessary to overcome a service-connected disability impairing a veteran's procreative ability (but only if such services are furnished by contract, except for services which the Chief Medical Director determines that Department of Veterans Affairs facilities are fully capable of furnishing in a cost-effective manner), (iii)* dental services and appliances as described in sections 610 and 612 of this title, *(iv)* optometric and podiatric **[**services**]** *services, (v)* (in the case of a person otherwise receiving care or services under this **[**chapter),**]** *chapter)* preventive health-care services as defined in section 662 of this title, **[**and (except under the conditions described in section 612(f)(1)(A)(i) of this title),**]** *(vi)* wheelchairs, artificial limbs, **[**trusses,**]** *trusses* and similar appliances, special clothing made necessary by the wearing of prosthetic appliances, and such other supplies or services as the **[**Administrator**]** *Secretary* determines to be reasonable and necessary, and **[**(ii)**]** *(vii)* travel and incidental expenses pursuant to the provisions of section 111 of this title; and

(B)(i) such consultation, professional counseling, training, and mental health services as are necessary in connection with the treatment—

(I) of the service-connected disability of a veteran pursuant to section 612(a) of this title, and

(II) in the discretion of the Administrator, of the non-service-connected disability of a veteran eligible for treatment under section 612(f)(1)(A)(i) of this title where such services were initiated during the veteran's hospitalization and the provision of such services on an outpatient basis is essential to permit the discharge of the veteran from the hospital.

for the members of the immediate family or legal guardian of a veteran, or the individual in whose household such veteran certifies an intention to live, as may be essential to the effective treatment and rehabilitation of the veteran (including, under the terms and conditions set forth in section 111 of this title, travel and incidental expenses of such family member or individual in the case of a veteran who is receiving care for a service-connected disability, or in the case of a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title); and

(ii) in the case of an individual who was a recipient of services under subclause (i) of this clause at the time of—

(I) the unexpected death of the veteran; or

(II) the death of the veteran while the veteran was participating in a hospice program (or a similar program) conducted by the Administrator,

such counseling services, for a limited period, as the Administrator determines to be reasonable and necessary to assist such individual with the emotional and psychological stress accompanying the veteran's death.

For the purpose of this paragraph, a dependent or survivor of a veteran receiving care under the last sentence of section 613(b) of this title shall be eligible for the same medical services as a veteran.

* * * * * * *

§ 602. **[Presumption relating to psychosis]** ***Special provisions relating to mental illness disabilities***

(a) For the purpose of this chapter, any veteran of World War II, the Korean conflict, or the Vietnam era who developed an active psychosis (1) within two years after discharge or release from the active military, naval or air service, and (2) before July 26, 1949, in the case of a veteran of World War II, before February 1, 1957, in the case of a veteran of the Korean conflict, or before May 8, 1977, in the case of a Vietnam era veteran, shall be deemed to have incurred such disability in the active military, naval, or air service.

(b)(1) Any veteran—

(A) who, as determined by the Chief Benefits Director of the Department of Veterans Affairs in accordance with paragraph (2) of this subsection, served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, the Korean conflict, or the Vietnam era or in any other area during a period in which hostilities (as defined in subsection (c) of this section) occurred in such area, and

(B) whom a mental health professional designated by the Chief Medical Director has diagnosed, following an examination of such veteran by such professional, to be suffering from post-traumatic stress disorder related to such service,

shall be furnished care and services for such disorder pursuant to sections 610(a)(1)(A) and 612(a)(1)(A) of this title even though such disorder has not been determined to be service-connected.

(2) In the case of a veteran who is diagnosed as suffering from post-traumatic stress disorder, a determination of whether the veteran satisfies the service requirement related to such disorder set out in paragraph (1) of this subsection shall be made by the most expeditious means practicable.

(c) For the purposes of subsection (b) of this section, the term "hostilities" means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with

enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

*   *   *   *   *   *   *

SUBCHAPTER II—HOSPITAL, NURSING HOME OR DOMICILIARY CARE AND MEDICAL TREATMENT

§ 610. Eligibility for hospital, nursing home, and domiciliary care

(a)(1) * * *

*   *   *   *   *   *   *

(e)(1)(A) * * *

*   *   *   *   *   *   *

(3) Hospital and nursing home care and medical services may not be provided under or by virtue of subsection (a)(1)(G) of this section after December 31, [1990.] *1993.*

*   *   *   *   *   *   *

§ 612. Eligibility for outpatient services

(a)(1) * * *

*   *   *   *   *   *   *

(b)(1) Outpatient dental services and treatment, and related dental appliances, shall be furnished under this section only for a dental condition or disability—

(A) which is service-connected and compensable in degree;

(B) which is service-connected, but not compensable in degree, but only if—

(i) the dental condition or disability is shown to have been in existence at the time of the veteran's discharge or release from active military, naval, or air service;

(ii) the veteran had served on active duty for a period of not less than 180 days immediately before such discharge or release;

(iii) application for treatment is made within 90 days after such discharge or release, except that (I) in the case of a veteran who reentered active military, naval, or air service within 90 days after the date of such veteran's prior discharge or release from such service, application may be made within 90 days from the date of such veteran's subsequent discharge or release from such service, and (II) if a disqualifying discharge or release has been corrected by competent authority, application may be made within 90 days after the date of correction; and

(iv) the veteran's certificate of discharge or release from active duty does not bear a certification that the veteran was provided, within the 90-day period immediately before the date of such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental services and treatment indicated by the examination to be needed;

(C) which is a service-connected dental condition or disability due to combat wounds or other service trauma, or of a former prisoner of war;

(D) which is associated with and is aggravating a disability resulting from some other disease or injury which was incurred in or aggravated by active military, naval, or air service;

(E) which is a non-service-connected condition or disability of a veteran for which treatment was begun while such veteran was receiving hospital care under this chapter and such services and treatment are reasonably necessary to complete such treatment;

(F) from which a veteran who is a former prisoner of war and who was detained or interned for a period of not less than 90 days is suffering; [or]

(G) from which a veteran who has a service-connected disability rated as total is [suffering.] *suffering; or*

(H) medically necessary in preparation for hospital admission or for a veteran otherwise receiving care or services under this chapter.

* * * * * * *

(3) The total amount which the Administrator may expend for furnishings, during any twelve-month period, outpatient dental services, treatment, or related dental appliances to a veteran under this section through private facilities for which the Administrator has contracted under clause (1), (2), or (5) of section 603(a) of this title may not exceed [$500] *$1,000* unless the Administrator determines, prior to the furnishing of such services, treatment, or appliances and based on an examination of the veteran by a dentist employed by the Veterans' Administration (or, in an area where no such dentist is available, by a dentist conducting such examination under a contract or fee arrangement), that the furnishing of such services, treatment, or appliances at such cost is reasonably necessary.

* * * * * * *

§ 612A. Eligibility for readjustment counseling and related mental health services

(a)*(1)* Upon the request of any veteran who served on active duty during the Vietnam era, the Administrator shall, within the limits of Veterans' Administration facilities, furnish counseling to such veteran to assist such veteran in readjusting to civilian life. Such counseling shall include a general mental and psychological assessment to ascertain whether such veteran has mental or psychological problems associated with readjustment to civilian life.

(2)(A) Upon the request of any veteran who served on active duty in a theater of combat operations (as defined by the Secretary) during World War I, World War II, or the Korean conflict or in any other area during a period in which hostilities (as defined in subparagraph (B) of this paragraph) occurred in such area, the Secretary may furnish counseling to such veteran in order to assist the veteran to overcome any psychological problems associated with

such service. The counseling shall include a general mental and psychological assessment to ascertain whether the veteran has mental or psychological problems associated with such service.

(B) For the purposes of subparagraph (A) of this paragraph, the term "hostilities" means an armed conflict in which members of the Armed Forces are subjected to danger comparable to the danger to which members of the Armed Forces have been subjected in combat with enemy armed forces during a period of war, as determined by the Secretary in consultation with the Secretary of Defense.

* * * * * * *

(h)(1) During the period beginning on January 1, 1986, and ending on September 30, 1988, the [Administrator] *Secretary* shall conduct a pilot program to provide and coordinate the provision of services described in paragraph (2) of this subsection. The pilot program shall be carried out in order to evaluate the effectiveness, feasibility, and desirability of providing veterans eligible for readjustment counseling under this section with additional services through facilities furnishing such counseling.

(2) The services referred to in paragraph (1) of this subsection are—

(A) counseling with respect to, and assistance in applying for, all benefits and services under laws administered by the [Veterans' Administration] *Department* for which veterans participating in the pilot program may be eligible;

(B) employment counseling, training, placement, and related services described in sections 2003 and 2003A of this title or provided under any other law administered by the Secretary of Labor;

(C) initial intake and referral services with respect to disabilities related to alcohol or drug dependence or abuse and follow-up services for veterans who have received treatment for such disabilities; and

(D) assistance in coordinating the provision of benefits and services to veterans participating in the pilot program with respect to such veterans' receipt of—

(i) services provided under the pilot program; and

(ii) other benefits and services provided under laws administered by the [Veterans' Administration], *Department*, the Secretary of Labor, or any other Federal agency or official.

(3)(A) In order to carry out the pilot program, the [Administrator] *Secretary* shall—

(i) designate as sites for demonstration projects 10 facilities which on December 3, 1985, are providing readjustment counseling under this section; and

(ii) assign such staff and other resources to such facilities as are necessary to enable such facilities to provide the services referred to in subparagraphs (A) and (C) of paragraph (2) of this subsection.

(B) Facilities designated under subparagraph (A) of this paragraph shall be known as Vietnam Veteran Resource Centers (hereinafter in this subsection referred to as "Resource Centers").

(4) The [Administrator—] *Secretary—*

(A) shall be responsible for coordinating the assignment and use of employees, on full- or part-time bases, as appropriate, in each Resource Center; and

(B) shall, in carrying out that responsibility, make maximum feasible use of the [Veterans' Administration] *Department* employees who are providing services at each facility on the date it is designated as a Resource Center under this subsection.

(5) The Secretary of Labor shall provide for the assignment to each Resource Center, on full- or part-time bases, as [the] *such* Secretary considers appropriate, of disabled veterans' outreach specialists appointed under section 2003A of this title or employees on the staffs of local employment service offices who are assigned to perform services under section 2004 of this title.

(6) Not later than April 1, 1987, the [Administrator] *Secretary* shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program during its first 15 months of operation. This report shall include—

(A) the Administrator's assessment of—

(i) the effectiveness of the pilot program in providing and coordinating the provision of the services described in paragraph (2) of this subsection and counseling and services furnished under subsections (a) and (b) of this section; and

(ii) the appropriateness of the use of the personnel assigned to this program;

(B) a description of any administrative action that the [Administrator] *Secretary* plans to take generally to increase the coordination of the provision of such services to veterans eligible for readjustment counseling services under this section;

(C) any recommendations that the [Administrator] *Secretary* considers appropriate; and

(D) a comparison of such assessment, plans, and recommendations with the evaluation of and the recommendations relating to the readjustment counseling program included in the report required by subsection (g)(2) of this section.

(7) Not later than January 1, 1989, the [Administrator] *Secretary* shall submit to such Committees a final report on the pilot program. The report shall include—

(A) updates of all information provided in the report submitted pursuant to paragraph (6) of this subsection; and

(B) the Administrator's final assessment of the pilot program based on 33 months of operation.

(i) Whenever a veteran is referred by a center to a Department general health-care facility for a determination regarding such veteran's eligibility for care and services under section 602(b) of this title, the veteran shall be evaluated for diagnostic purposes within 7 days after the date on which the referral is made.

[(i)] *(j)* For the purposes of this section:

(1) The term "center" means a facility (including a Resource Center designated under subsection (h)(3)(A) of this section) which is operated by the [Veterans' Administration] *Department* for the provision of services under this section and which

(A) is situated apart from [Veterans' Administration] *Department* general health-care facilities, or (B) was so situated but has been relocated to a [Veterans' Administration] *Department* general health-care facility.

(2) The term ["Veterans' Administration] *"Department* general health-care facility" means a health-care facility which is operated by the [Veterans' Administration] *Department* for the furnishing of health-care services under this chapter, not limited to services provided through the program established under this section.

* * * * * * *

§ 614. Fitting and training in use of prosthetic appliances; seeing-eye dogs

(a) * * *

* * * * * * *

(b) The Administrator may provide seeing-eye or guide dogs trained for the aid of the blind to veterans who are entitled to disability compensation, and may pay travel and incidental [expenses under] *expenses, under* the terms and conditions set forth in section 111 of this [title] *title, for travel* to and from their homes [and] *that are* incurred in becoming adjusted to such seeing-eye or guide dogs. The Administrator may also provide such veterans with mechanical or electronic equipment for aiding them in overcoming the handicap of blindness.

(c)(1) The Secretary may provide signal dogs to veterans who have service-connected hearing impairments and are in need of the assistance of such dogs and may pay travel and incidental expenses, under the terms and conditions set forth in section 111 of this title, for travel to and from their homes that are incurred in becoming adjusted to such signal dogs.

(2) For the purposes of this subsection, the term "signal dog" means a dog specially trained to provide hearing assistance to deaf persons.

[§ 615. Tobacco for hospitalized veterans

[The Administrator may furnish tobacco to veterans receiving hospital or domiciliary care.]

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§ 617. Home health services; invalid lifts and other devices

(a)(1) * * *

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(2) Improvements and structural alterations may be furnished as part of such home health services only as necessary to assure the continuation of treatment for the veteran's disability or to provide access to the home or to essential lavatory and sanitary facilities. The cost of such improvements and structural alterations (or the amount of reimbursement therefor) under this subsection may not exceed—

(A) [$2,500] *$5,000* in the case of medical services furnished under paragraph (1) of section 612(a) of this title; or

(B) [$600] *$1,200* in the case of medical services furnished under any other provision of section 612 of this title

* * * * * * *

§ 618. Therapeutic and rehabilitative activities

(a) * * *

* * * * * * *

(b)(1) In furnishing rehabilitative services under this chapter, the Administrator, upon the recommendation of the Chief Medical Director, may enter into [contractural arrangements with private industry or other sources outside the Veterans' Administration] *a contract or other arrangement with any appropriate source (whether or not an element of the Department of Veterans Affairs or of any other Federal entity)* to provide for [therapeutic] *compensated* work *therapy* for patients and members in Veterans' Administration health care facilities.

(2) Notwithstanding any other provision of law, the Administrator may also furnish rehabilitative services under this subsection through contractual arrangements with nonprofit entities to provide for such [therapeutic] *compensated* work *therapy* for such patients. The Administrator shall establish appropriate fiscal, accounting, management, recordkeeping, and reporting requirements with respect to the activities of any such nonprofit entity in connection with such contractual arrangements.

(c)(1) There is hereby established in the Treasury of the United States a revolving fund known as the Veterans' Administration Special Therapeutic and Rehabilitation Activities Fund (hereinafter in this section referred to as the "fund") for the purpose of carrying out the provisions of subsection (b) of this [section.] *section (including defraying the costs of travel and related expenses necessary to train and educate employees in the administration of services under such subsection) and for the purpose of carrying out section 618A(c) of this title.* Such amounts of the fund as the Administrator may determine to be necessary to establish and maintain operating accounts for the various rehabilitative services activities may be deposited in checking accounts in other depositaries selected or established by the Administrator.

(2) All funds received by the Veterans' Administration under contractual arrangements made under subsection (b) of this section, or by nonprofit entities described in paragraph (2) of such subsection, *and all funds received by the Department as rent under section 618A(c) of this title,* shall be deposited in or credited to the fund, and the Administrator shall distribute out of the fund moneys to participants at rates not less than the wage rates specified in the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and regulations prescribed thereunder for work of similar character. *The Secretary may also distribute out of unobligated amounts in the fund such amounts as may be necessary for the acquisition, management,*

maintenance, and disposition of real property for the purpose of carrying out section 618A of this title.

* * * * * * *

§ 618A. Compensated work therapy and therapeutic residence pilot program

(a) During fiscal years 1991 through 1995, the Secretary shall conduct a compensated work therapy and therapeutic residence pilot program. The pilot program shall have two components as follows:

(1) A component, under subsection (b) of this section, which provides for contracting with nonprofit corporations to furnish compensated work therapy in conjunction with the operation of therapeutic residences.

(2) A component, under subsection (c) of this section, which provides for the direct operation of therapeutic residences in conjunction with the furnishing of compensated work therapy.

(b)(1) Under the pilot program, the Secretary shall encourage and participate in the establishment of nonprofit corporations for the purpose of contracting with such nonprofit corporations to conduct compensated work therapy programs under the pilot program at not less than ten and not more than fifteen Department of Veterans Affairs medical centers operating such programs.

(2) The Secretary may enter into a contract with a nonprofit corporation under the pilot program only if the corporation provides assurances satisfactory to the Secretary that it will operate a therapeutic residence for eligible veterans in conjunction with an existing compensated work therapy program at a medical center. The contract may remain in effect only as long as the corporation operates the therapeutic residence for eligible veterans in connection with the pilot program.

(3) A contract with a nonprofit corporation under this subsection may provide for the Secretary to furnish the corporation (with or without consideration) in-kind services, including—

(A) technical and clinical advice;

(B) supervision of the activities of compensated work therapy participants in the rehabilitation of any property for use as a therapeutic residence under the contract and for possible later sale as a private residence; and

(C) minor maintenance of and minor repairs to such a therapeutic residence.

(4)(A) In order to assist a nonprofit corporation to purchase or lease any real property for the purpose of operating a therapeutic residence under the pilot program or to operate such a residence, the Secretary may lend the corporation up to the maximum amounts specified in subparagraphs (C) and (D), respectively, of this paragraph.

(B) Loans authorized by this paragraph shall be paid out of ~~sums~~ in the fund.

(C) The amount of a loan under this paragraph for the purchase or lease of real property may not exceed—

(i) in the case of a purchase of real property for such use, the amount equal to 25 percent of the purchase price; or

(ii) in the case of a lease of real property for such use, the amount of the rent for one year.

(D) The amount of a loan under this paragraph for the operation of a therapeutic residence may not exceed an amount equal to the estimated amount, as approved by the Secretary, necessary for the operation of the residence for a period of six months.

(E) A loan made to a nonprofit corporation under this paragraph—

(i) shall be payable on demand;

(ii) shall not bear interest for the first five years;

(iii) after the first five years, shall bear a rate of interest specified by the Secretary, in consultation with the Secretary of the Treasury; and

(iv) shall be subordinate to any mortgage loan entered into for purchase of the residence.

(5) In the case of each nonprofit corporation to which a loan is made under paragraph (4) of this subsection for the purchase of real property, the pilot program contract with such corporation shall include a provision that requires the corporation—

(A) to sell the real property if the corporation does not operate or ceases to operate a therapeutic residence on that property;

(B) to pay the fund the sum of the unpaid balance of the loan and the amount equal to 50 percent of the excess, if any, of the sale price over the total amount paid by the corporation for the purchase and improvement of such real property; and

(C) to use the proceeds of the sale of the property to pay the obligations imposed by clause (B) of this paragraph.

(6)(A) The Secretary shall deposit in escrow any sums to be loaned to a nonprofit corporation under paragraph (4) of this subsection until the corporation demonstrates to the satisfaction of the Secretary that at least 25 percent of the net annual operating expenses of the corporation will be paid out of funds obtained from sources other than the Department of Veterans Affairs or will be satisfied by in-kind services obtained from such sources, or both. For the purpose of this subparagraph, the term "net annual operating expenses" means the amount equal to the excess of the estimated amount of the annual expenses of operating the therapeutic residence or therapeutic residences to be acquired or operated with such escrow sums over the estimated annual rental income from eligible veterans residing in such residence or residences.

(B) If, in the case of a corporation for which any amount is held in escrow pursuant to subparagraph (A) of this paragraph in connection with a contract awarded under the pilot program, the corporation fails to meet the requirements of such subparagraph within 18 months after the award of that contract, the corporation shall forfeit all rights to the amount so held in escrow, the escrow shall be terminated, and that amount shall be credited to the fund.

(7)(A) Subject to subparagraph (B) of this paragraph, the Secretary shall transfer to the Veterans Health Services and Research Administration not less than 10 residences acquired by the Department of Veterans Affairs in the administration of chapter 37 of this title.

(B) Each property so transferred under this paragraph—

(i) shall be located in an area suitable for meeting the need of the Department for a therapeutic residence under the pilot program; and

(ii) shall be leased, in accordance with subparagraph (C) of this paragraph, to a nonprofit corporation for operation as a therapeutic residence under the pilot program.

(C) A lease of property under this paragraph—

(i) shall provide for a lease period of not less than one and not more than three years and may include one or more options for renewal at the option of both parties for up to three additional years;

(ii) shall require that the property be operated as a therapeutic residence during the lease period;

(iii) shall require that the residents of the therapeutic residence pay to the nonprofit corporation such reasonable rent as the Secretary shall prescribe;

(iv) shall require the lessee to pay to the medical center benefiting from the operation of such therapeutic residence 60 percent of the rent received each month during the lease period from eligible veterans residing in a therapeutic residence on such property;

(v) shall provide for return of the property to the Secretary upon termination of the lease; and

(vi) shall include such other terms and conditions, consistent with this subsection, as the Secretary considers appropriate for protection of the interests of the United States.

(8) The director of a medical center shall hold the sums received pursuant to paragraph (8)(C)(iii) of this subsection until such sums are transferred pursuant to this paragraph. The Secretary shall periodically transfer such sums to the appropriate loan guaranty fund. The Secretary, in consultation with the Secretary of the Treasury, shall prescribe regulations to carry out this paragraph.

(9) In the case of a nonprofit corporation that, on September 30, 1990, is conducting a compensated work therapy program pursuant to a contract awarded by the Department of Veterans Affairs, the operations of such corporation not covered by a contract awarded under the pilot program shall not be affected by the provisions of this subsection.

(10) In-kind services furnished to a nonprofit corporation by the Department of Veterans Affairs under the pilot program shall be considered as part of a pass-through account under the Department's resource allocation methodology and any other methodology used by the Department to allocate resources to its health-care facilities.

(11)(A) Any nonprofit corporation established to operate a therapeutic residence or therapeutic residences under the pilot program shall be established in accordance with the nonprofit corporation laws of the State or States in which the therapeutic residence or residences are to be operated and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

(B) A nonprofit corporation participating in the pilot program shall be established solely for the purpose of conducting one or more

compensated work therapy programs and operating therapeutic residence in conjunction with such programs.

(C) Except as otherwise provided in this paragraph or under regulations prescribed by the Secretary, a nonprofit corporation participating in the pilot program, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

(D) The board of directors of each nonprofit corporation participating in the pilot program shall include employees of the Department, but the total number of such employees on the board must be less than one-half of the total number of directors. An employee of the Department of Veterans Affairs directly responsible for the conduct of compensated work therapy programs at the medical center benefiting from the operation of a therapeutic residence by the corporation shall be a member of the board.

(E) A nonprofit corporation participating in the pilot program may—

(i) accept gifts and grants from, and enter into contracts with, individuals and public and private entities solely to carry out the purpose specified in subparagraph (B) of this subsection;

(ii) employ such employees as it considers necessary for such purpose and fix the compensation of such employees; and

(iii) in the discretion of the corporation board of directors, transfer gifts and grants accepted under clause (i) of this subparagraph to the fund.

(F) The records of a nonprofit corporation participating in the pilot program shall be available to the Secretary.

(G) For the purpose of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a nonprofit corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

(H) Such a nonprofit corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

(I) Each such nonprofit corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

(J) Each member of the board of directors of a nonprofit corporation participating in the pilot program, each employee of such a corporation, and each employee of the Department involved in the functions of the corporation during any year—

(i) shall, with respect to such functions, be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

(ii) shall, with respect to such functions, submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has com-

plied with, such laws and regulations in the same manner as it is required of Federal employees.

(K) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and locations of nonprofit corporations participating in the pilot program and the amount loaned and the value of in-kind services furnished by the Secretary to each such corporation under the pilot program.

(c)(1) Under the pilot program, the Secretary, in connection with the conduct of compensated work therapy programs at not less than ten and not more than fifteen Department of Veterans Affairs medical centers, shall operate residences as therapeutic residences for the furnishing of transitional housing solely for veterans who are furnished compensated work therapy pursuant to section 618(b) of this title.

(2) Notwithstanding any other provision of law, the Secretary may use such procurement procedures for the purchase, lease, or other acquisition of residential housing for purposes of this subsection as the Secretary considers appropriate to expedite the opening and operation of therapeutic residences and to protect the interests of the United States.

(3) A therapeutic residence may be operated for veterans described in paragraph (1) of this subsection under the following conditions:

(A) That only veterans described in such paragraph and a house manager reside in such residence.

(B) That each resident, other than the house manager, pay the Department rent for the period or periods of residence in such residence.

(C) That, in the establishment and operation of such therapeutic residence in a community, the Secretary consult with appropriate representatives of such community and comply with zoning requirements, building permit requirements, and similar requirements applicable to other real property used for similar purposes in such community.

(D) That the residence meet the State and community fire and safety requirements applicable to other real property used for similar purposes in the community in which the therapeutic residence is located.

(4)(A) The Secretary may provide for free room and subsistence for a house manager in addition to or instead of payment of a fee for the house manager's services.

(B) The total amount of compensation paid and otherwise provided for a house manager (taking into consideration the value of any free room and subsistence under subparagraph (A) of this paragraph) may not be less than the equivalent of the total amount that would be payable to the house manager for the house manager's services if the house manager were paid the hourly minimum wage under section 6(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)).

(5) The Secretary may operate as a therapeutic residence under this subsection—

(A) any suitable residential property (i) acquired by the Secretary as the result of a default on a loan made, guaranteed, or

insured under chapter 37 of this title, or (ii) purchased for the pilot program; and

(B) any other suitable residential property purchased, leased, or otherwise acquired by the Secretary.

(6) In the case of the purchase of any property referred to in paragraph (5)(A) of this subsection, the Secretary shall transfer from unobligated amounts in the fund to the appropriate loan guaranty fund the amount equal to the amount that the Secretary would charge for the sale of such property to a nonprofit organization or a State pursuant to section 9 of Public Law 100–198 (101 Stat. 1320).

(7) Subject to the authority, direction, and control of the Secrtary, the Chief Medical Director shall be responsible for the management, maintenance, and disposition of property acquired for the purpose of this subsection.

(8) The Secretary shall prescribe—

(A) a procedure for establishing reasonable rental rates for persons residing in therapeutic residences; and

(B) appropriate limits on the period for which such persons may reside in therapeutic residences.

(9) The Secretary may dispose of any property acquired for the purpose of carrying out this subsection when such property is no longer used for such purpose. The proceeds of disposition of such property shall be credited to the fund.

(d)(1) There is authorized to be appropriated to the fund for the purposes of carrying out this section, a total of $5,000,000 for fiscal years 1991 through 1995.

(2) To the extent that less than $5,000,000 is appropriated pursuant to paragraph (1) of this subsection, the Secretary may transfer to the fund, from unobligated amounts in the General Post fund of the Department of Veterans Affairs medical center that will contract for the operation of or operate a therapeutic residence under this section, such amounts as the Secretary determines are necessary, in addition to any amounts so appropriated, to carry out this section.

(e)(1) Not later than February 1, 1995, the Secretary shall submit to the Committee on Veterans' Affairs of the Senate and House of Representatives a report on the experience under the pilot program.

(2) The report shall include—

(A) the Secretary's assessment of the effects that transfers of housing to Veterans Health Services and Research Administration under the pilot program have on the Loan Guarantee Revolving Fund established under section 1824(a) of this title and the Home Loan Guaranty Fund established under section 1824A(a) of this title; and

(B) such recommendations as the Secretary considers appropriate.

(f) For the purposes of this section—

(1) the term "appropriate loan guaranty fund" means (i) in the case of a lease or purchase of a property that had secured a loan that was guaranteed, insured, or made under chapter 37 of this title and was closed or assumed after September 30, 1989, the Home Loan Guaranty Fund established by section 1824A(a) of this title, or (ii) in the case of any other property, the Loan Guaranty Revolving Fund established under section 1824(a) of this title;

(2) the term "eligible veteran" means a veteran eligible to receive therapeutic and rehabilitative services under this section;

(3) the term "existing compensated work therapy program" means a compensated work therapy program that is being conducted under section 618(b) of this title by a Department of Veterans Affairs medical center on the date of the enactment of the Veterans Benefits and Health Care Act of 1989;

(4) the term "fund" means the Special Therapeutic and Rehabilitation Activities Fund established by section 618(c)(1) of this title;

(5) the term "nonprofit corporation" means a corporation recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

(6) the term "therapeutic residence" means a residential facility in which eligible veterans may reside while participating in a compensated work therapy program conducted pursuant to section 618 of this title and includes real property associated with such facility.

(g) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropration Acts.

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§ 620A. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities

(a)(1) * * *

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[(e) The Administrator may not furnish care and treatment and rehabilitative services under subsection (a) of this section after September 30, 1991.**]**

[(f)**]** *(e)*(1) During the period beginning on December 1, 1988, and ending on October 1, 1997, the Administrator shall conduct an ongoing clinical evaluation in order to determine the long-term results of drug and alcohol abuse treatment furnished to veterans in contract residential treatment facilities under this section.

(2) The evaluation shall include an assessment of the following:

(A) The long-term results of treatment referred to in paragraph (1) of this subsection on drug and alcohol use by veterans who may have received such treatment.

(B) The need for hospitalization of such veterans for drug and alcohol abuse after completion of the residential treatment.

(C) The employment status and income of such veterans.

(D) The extent of any criminal activity of such veterans.

(E) Whether certain models and methods of residential treatment for drug and alcohol abuse are more successful for veterans with specific abuses, specific levels of resources available to them, and specific needs than are other models and methods.

(3) To the extent feasible, the Administrator shall select for consideration in the evaluation veterans whose treatment for drug and alcohol abuse in contract residential treatment facilities under

such section represents a variety of models and methods of residential drug and alcohol abuse treatment.

(4) The Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives the following reports on the evaluation under this subsection:

(A) Not later than February 1, 1993, an interim report containing information obtained during the first four years of the evaluation and any conclusions that the Administrator has drawn on the basis of that information.

(B) Not later than March 31, 1988, a final report containing information obtained during the evaluation and the determinations and conclusions of the Administrator based on that information.

[(g)**]** *(f)* The authority of the Administrator to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(g)(1) To assist veterans in recovering from alcohol or drug dependence or abuse disabilities, there is hereby established in the Treasury of the United States a revolving fund to be known as the "Transitional Housing Fund". The Secretary shall use the proceeds of the Fund to make loans authorized under subsection (i) of this section to nonprofit entities for the purpose of assisting such entities in meeting the costs of establishing programs for the provision of transitional residences for recovering veterans.

(2) For the purposes of this paragraph, the term "recovering veterans" means veterans who, at the time of entering the residences, are being furnished services by the Secretary, directly or by contract, for alcohol or drug dependence or abuse disabilities or who, at any time within 90 days preceding the date of entering the residences, have been furnished such services by the Secretary for such purpose.

(h) On October 1, 1990, the Secretary of the Treasury shall transfer $100,000 from the revolving fund established pursuant to section 4204 of this title to the Transitional Housing Fund. After that date, the Secretary of the Treasury shall transfer from the revolving fund established pursuant to that section to the Transitional Housing Fund such amounts, not to exceed a total of $900,000, as the Secretary of Veterans Affairs may specify.

(i) The Secretary shall make loans from the Transitional Housing Fund for the purpose described in subsection (g)(1) of this section. In making loans under this subsection, the Secretary shall ensure that—

(1) each loan is repaid within two years after the date on which the loan is made;

(2) each loan is repaid through monthly installments and that a reasonable penalty is assessed for each failure to pay an installment by the date specified in the loan agreement involved; and

(3) each loan is made only to a nonprofit private entity which agrees that, in the operation of each residence established with the assistance of the loan—

(A) the use of alcohol or any illegal drug in the residence will be prohibited;

(B) any resident who violates the prohibition in subclause (A) of this clause will be expelled from the residence;

(C) the costs of maintaining the residence, including fees for rent and utilities, will be paid by the residents;

(D) the residents will, through a majority vote of the residents, otherwise establish policies governing the conditions of residence, including the manner in which applications for residence are approved; and

(E) the residence will be operated solely as a residence for not less than six veterans.

(j) No loan may be made under this section for more than $4,000 and not more than $4,000 in total loans may be made for the establishment of any particular transitional residence.

(k) All loan repayments and penalties collected under this section shall be deposited to the credit of the Transitional Housing Fund.

(l) Not later than 90 days after the date of the enactment of this subsection, the Secretary shall issue guidelines for the operation of residences described in subsection (g)(1) of this section.

(m) The Secretary may enter into contractual agreements with private nonprofit corporations for the purposes of collecting on behalf of the Secretary payments on the loans described in subsection (g)(1) of this section.

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§ 620D. Noninstitutional alternatives to nursing home care; pilot program

(a) During the four-year period beginning on October 1, 1990, the Secretry shall conduct a pilot program for the furnishing of medical, rehabilitative, and health-related services in noninstitutional settings for veterans who—

(1) are eligible under this chapter for, and are in need of, nursing home care; and

(2)(A) are in receipt of or in need of nursing home care primarily for the treatment of a service-connected disability; or

(B) have a service-connected disability rated at 50 percent or more.

(b)(1) Under the pilot program conducted pursuant to subsection (a), the Secretary shall (A) furnish appropriate health-related services solely through contracts with appropriate public and private agencies that provide such services, and (B) in the case of each veteran furnished services under the pilot program, appoint a Department of Veterans Affairs health-care employee to furnish case management services.

(2) For the purposes of paragraph (1) of this subsection, "case management" includes the coordination and facilitation of all services furnished to a veteran by the Department of Veterans Affairs, either directly or through contract, including, but not limited to, screening, assessment of needs, planning, referral (including referral for services to be furnished by the Department, either directly or through a contract, or by an entity other than the Department) monitoring, reassessment, and followup.

(c) The Secretary may provide in-kind assistance (through the services of Department of Veterans Affairs employees and the shar-

ing of other Department resources) to a facility furnishing services to veterans under subsection (b)(1)(A) of this section. Any such in-kind assistance shall be provided under a contract between the Department and the facility concerned. The Secretary may provide such assistance only for use solely in the furnishing of appropriate services under this section and only if, under such contract, the Department receives reimbursement for the full cost of such assistance, including the cost of services and supplies and normal depreciation and amortization of equipment. Such reimbursement may be made by reduction in the charges to the United States or by payment to the United States. Any funds received through such reimbursement shall be credited to funds allotted to the Department facility that provided the assistance.

(d) The total cost of providing services or in-kind assistance in the case of any veteran in any fiscal year under the pilot program may not exceed 65 percent of the cost that would have been incurred by the Department during such fiscal year if the veteran had been furnished, instead, nursing home care under section 610 of this title in that fiscal year.

(e) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS RELATING TO HOSPITAL AND NURSING HOME CARE AND MEDICAL TREATMENT OF VETERANS

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§ 629. Recovery by the United States of the cost of certain care and services

(a)(1)* * *

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(d) Any contract or agreement into which the Administrator enters with a person under section 3718 of title 31 for collection services to recover indebtedeness owed the United States under this section shall provide, with respect to such services, that such person is subject to sections 3301 and [4132] *4142* of this title.

SUBCHAPTER IV—HOSPITAL CARE AND MEDICAL TREATMENT FOR VETERANS IN THE REPUBLIC OF THE PHILIPPINES

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§ 632. Contracts and grants to provide for the care and treatment of United States Veterans by the Veterans Memorial Medical Center

(a) The President, with the concurrence of the Republic of the Philippines, may authorize the Administrator to enter into contracts with the Veterans Memorial Medical Center, with the approval of the appropriate department of the Government of the Republic of the Philippines, covering the period beginning on October

1, 1981, and ending on September 30 [1990,] *1995,* under which the United States—

(1) will provide for payments for hospital care and medical services (including nursing home care) in the Veterans Memorial Medical Center, as authorized by section 624 of this title and on the terms and conditions set forth in such section, to eligible United States veterans at a per diem rate to be jointly determined for each fiscal year by the two Governments to be fair and reasonable; and

(2) may provide that payments for such hospital care and medical services provided to eligible United States veterans may consist in whole or in part of available medicines, medical supplies and equipment furnished by the Administrator to the Veterans Memorial Medical Center at valuations therefor as determined by the Administrator, who may furnish such medicines, medical supplies, and equipment through the revolving supply fund pursuant to section 5021 of this title.

(b)(1) To further assure the effective care and treatment of United States veterans in the Veterans Memorial Medical Center, there is authorized to be appropriated for each fiscal year during the period beginning on October 1, 1981, and ending on September 30 [1990,] *1995,* the sum of $1,000,000 to be used by the Administrator for making grants to the Veterans Memorial Medical Center for the prupose of assisting the Republic of the Philippines in the replacement and upgrading of equipment and in rehabilitating the physical plant and facilities of such center. *Of the amount appropriated for such purpose for each fiscal year after fiscal year 1990, $50,000 shall be used for the purpose of educating and training personnel of the Veterans Memorial Medical Center.*

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SUBCHAPTER VI—SICKLE CELL ANEMIA

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§ 653. Voluntary participation; confidentiality

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(b) Patient records prepared or obtained under this subchapter shall be held conficential in the same manner and under the same conditions prescribed in section [4132] *4142* of this title.

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SUBCHAPTER VII—PREVENTION HEALTH-CARE SERVICES PILOT PROGRAM

§ 661. Purpose

The purpose of this subchapter is to provide for a preventive health-care services pilot program in order to help (1) ensure the best possible health care for certain veterans otherwise being furnished care or services under this [chapter, including veterans with service-connected disabilities rated at 50 per centum or more and veterans being furnished care or services involving a service-connected disability under this chapter,] *chapter* by furnishing to such veterans feasible and appropriate preventive health-care services, and (2) determine the cost-effectiveness and medical advantages of furnishing such preventive health-care services.

§ 662. Definition

For the purposes of this subchapter, the term "preventive health-care services" means—

(1) periodic medical and dental [examinations;] *education about nutrition, stress management, physical fitness, and smoking cessation);*

(2) patient health education (including [nutrition education);] *examinations (including screenings for high blood pressure, glaucoma, colorectal cancer, and cholestrol);*

(3) maintenance of drug use profiles, patient drug monitoring, and drug utilization education;

(4) mental health preventive services;

(5) substance abuse prevention measures;

(6) immunizations against infectious disease;

(7) prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature;

(8) genetic counseling concerning inheritance of genetically determined diseases;

(9) routine vision testing and eye care services;

(10) periodic reexamination of members of likely target populations (high-risk groups) for selected diseases and for functional decline of sensory organs, together with attendant appropriate remedial intervention; and

(11) such other health-care services as the Administrator may determine to be necessary to provide effective and economical preventive health care.

§ 663. Preventive health-care services

(a)(1) In order to carry out the purpose of this subchapter, the [Administrator, within the limits of Veterans' Administration facilities and in accordance with regulations which the Administrator shall prescribe, shall, during fiscal years 1984 through 1988, furnish to any veteran described in section 612(a)(1)(B) of this title otherwise being furnished care or services under this chapter, and to any veteran receiving care or services under this chapter involving a service-connected disability, such preventive health-care services as the Administrator determines are feasible and appropriate. In carrying out the pilot program under this subchapter, the Administrator may furnish such preventive health-care services to any other veteran described in section 612(a)(1)(B) of this title.] *Secretary, through fiscal year 1995—*

(A) shall furnish annually at least two preventive health-care services that the Secretary determines to be feasible and appropriate to any veteran being furnished care or services under section 610(a)(1) or 612(a) (1) or (2) of this title; and

(B) shall implement annually at each Department of Veterans Affairs health-care facility a major preventive health-care and health-promotion initiative for such veterans.

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(c) In carrying out the program provided for in this subchapter, the Administrator may not expend more than $10,000,000 in fiscal year 1980, more than $12,000,000 in fiscal year 1981, more than $13,000,000 in fiscal year 1982, more than $14,000,000 in fiscal year 1983, **[**or**]** more than $15,000,000 in each of fiscal years 1984 through **[**1988.**]** *1988, more than $16,000,000 in fiscal year 1991, more than $17,000,000 in fiscal year 1992, more than $18,000,000 in fiscal year 1993, more than $19,000,000 in fiscal year 1994, or more than $20,000,000 in fiscal year 1985.*

(d)(1) The Chief Medical Director shall designate an official in the Veterans Health Services and Research Administration to act as the Director of Preventive Health-Care and Health-Promotion Programs.

(2) The Director of Preventive Health-Care and Health-Promotion Programs shall prepare guidance regarding and be responsible for coordinating and evaluating, and advising the Chief Medical Director on, all activities carried out under this subchapter.

§ 664. Reports

[The Administrator shall include in the annual report to the Congress for each of fiscal years 1984 through 1988 required by section 214 of this title a comprehensive report on the administration of this subchapter, including such recommendations for additional legislation as the Administrator considers necessary.**]**

(a) The Secretary shall submit to the Committees on Veteran's Affairs of the Senate and House of Representatives—

(1) not later than February 1, 1993, an interim report on the experience under the program provided for by this subchapter; and

(2) not later than February 1, 1995, a final report on the experience under the program.

(b) Each report submitted pursuant to subsection (a) of this section shall include, with respect to the experience under the program through September 30 of the year preceding the deadline for submission of such report specified in subsection (a) of this section—

(1) a description of the types of services that have been furnished pursuant to section 663(a)(1)(A) and the number of veterans who received such services;

(2) a description of the preventive health-care and health-promotion initiatives that were implemented pursuant to section 663(a)(1)(B) of this title and the number of veterans who have been served through such initiatives;

(3) a description of the types of preventive health-care services that have been furnished pursuant to sections 610, 612, and 601(6) of this title and the number of veterans who received such services;

(4) a description of activities conducted pursuant to section 663(a)(2) of this title;

(5) an assessment of the results of the program; and

(6) any plans for administrative action, and any recommendations for legislation, that the Secretary considers appropriate.

CHAPTER 19—INSURANCE

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SUBCHAPTER I—NATIONAL SERVICE LIFE INSURANCE

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§ 722A. Supplemental service disabled veterans' insurance for totally disabled veterans

(a) Any person insured under section 722(a) of this title who qualifies for a waiver of premiums under section 712 of this title is eligible, as provided in this section, for supplemental insurance in an amount not to exceed $10,000.

(b) To qualify for supplemental insurance under this section a person must file with the Secretary an application for such insurance not later than the end of (1) the one-year period beginning on the first day of the first month following the month in which this section is enacted, or (2) the one-year period beginning on the date that the Department notifies the person that the person is entitled to a waiver of premiums under section 712 of this title.

(c) Supplemental insurance granted under this section shall be granted upon the same terms and conditions as insurance granted under section 722(a) of this title, except that such insurance may not

be granted to a person under this section unless the application is made for such insurance before the person attains 65 years of age.

(d) No waiver of premiums shall be made in the case of any person for supplemental insurance granted under this section.

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CHAPTER 21—SPECIALLY ADAPTED HOUSING FOR DISABLED VETERANS

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§ 806. Veterans' Mortgage Life Insurance

(a) * * *

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(b) The [initial] amount of insurance provided a veteran under this section may not exceed the lesser of [$40,000] *$90,000* or the amount of the loan outstanding on the housing unit. The amount of such insurance shall be reduced according to the amortization schedule of the loan and may not at any time exceed the amount of the outstanding loan with interest. If there is no outstanding loan on the housing unit, insurance is not payable under this section. If an eligible veteran elects not to be insured under this section, the veteran may thereafter be insured under this section, but only upon submission of an application, payment of required premiums, and compliance with such health requirements and other terms and conditions as may be prescribed by the Administrator.

* * * * * * *

CHAPTER 24—NATIONAL CEMETERIES AND MEMORIALS

* * * * * * *

§ 1002. Persons eligible for interment in national cemeteries

Under such regulations as the Secretary may prescribe and subject to the provisions of section 3505 of this title, the remains of the following persons may be buried in any open national cemetery in the National Cemetery System:

(1) * * *

* * * * * * *

(5) The surviving spouse, minor child, and, in the discretion of the Secretary, unmarried adult child of any of the persons listed in paragraphs (1) through (4). *For purposes of this paragraph, the term "minor child" includes a child under 21 years of age or under 23 years of age if the person is pursuing a course of instruction at an educational institution.*

* * * * * * *

PART III—READJUSTMENT AND RELATED BENEFITS

* * * * * * *

CHAPTER 30—ALL-VOLUNTEER FORCE EDUCATIONAL ASSISTANCE PROGRAM

* * * * * * *

SUBCHAPTER II—BASIC EDUCATIONAL ASSISTANCE

* * * * * * *

§ 1418. Opportunity for certain active-duty personnel to withdraw election not to enroll

(a) * * *

* * * * * * *

(b) An individual described in clauses (1) through (3) of subsection (a) of this section who made an election under section 1411(c)(1) or 1412(d)(1) of this title and who—

(1) while serving on active duty during the open period, makes a withdrawal of such an election;

(2) continues to serve the period of service which, at the beginning of the open period such individual was obligated to serve;

(3)(A) serves the obligated period of service described in clause (2) of this subsection;

(B) before completing such obligated period of service, is discharged or released from active duty for (i) a service-connected disability, (ii) a medical condition which preexisted such service and which the Secretary determines is not servive connected, or (iii) hardship; or

(C) before completing such obligated period of service, is (i) discharged or released from active duty for the convenience of the Government after completing not less than 20 months of such period of service, if such period was less than three years, or 30 months, if such period was at least three years, or (ii) in voluntarily discharged or released from active duty for the convenience of the Government as a result of a reduction in force, as determined by the Secretary concerned in accordance with regulations prescribed by the Secretary of Defense;

(4) before completing such obligated period of [service,] *service (i)* has completed the requirements of a secondary school diploma (or an equivalency [certificate);] *certificate, or (ii) has successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree;* and

(5) upon completion of such obligated period of service—

(A) is discharged from service with an honorable discharge, is palced on the retired list, is transferred to the Fleet Reserve or Fleet Marine Corps Reserve, or is placed on the temporary disability retired list;

(B) continues on active duty; or

(C) is released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the Secretary concerned as honorable service, is entitled to basic educational assistance under this chapter.

* * * * * * *

SUBCHAPTER IV—TIME LIMITATION FOR USE OF ELIGIBILITY AND ENTITLEMENT; GENERAL AND ADMINISTRATIVE PROVISIONS

* * * * * * *

§ 1432. Limitations on educational assistance for certain individuals

(a) * * *

* * * * * * *

(f)(1) * * *

* * * * * * *

(3) The number of months of entitlement charged in the case of any individual for a program of education described in paragraph (1) of this subsection shall be equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such program by the monthly rate of educational assistance which, except for paragraph (1) of this subsection, such individual would otherwise be paid under subsection (a)(1), (b)(1), **[**of (c)**]** *(c), or (d)(1)* of section 1415 of this title, as the case may be.

§ 1433. Bar to duplication of educational assistance benefits

(a)(1) * * *

* * * * * * *

(b) A period of service counted for purposes of repayment under **[**section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141 note),**]** *chapter 109 of title 10* of an education loan may not also be counted for purposes of entitlement to educational assistance under this chapter.

* * * * * * *

CHAPTER 31—TRAINING AND REHABILITATION FOR VETERANS WITH SERVICE-CONNECTED DISABILITIES

* * * * * * *

§ 1502. Basic entitlement

A person shall be entitled to a rehabilitation program under the terms and conditions of this chapter if such person—

(1)(A) is a veteran who has a service-connected disability which is, or but for the receipt of retired pay would be, compensable under chapter 11 of this title and which was incurred or aggravated in service on or after September 16, 1940, or (B) is hospitalized *or is receiving outpatient medical treatment,* for a service-connected disability **[**in a hospital over which the Secretary concerned has jurisdiction**]** pending discharge **[**or release**]** from active military, naval, or air **[**service**]** *service,* and **[**is suffering from a disability which**]** the Secretary determines *that (i) the facility providing the hospitalization or treatment either is doing so under contract or agreement with the Secretary concerned or is under the jurisdiction of the Secretary concerned, and (ii) the person is suffering from a disability which* will likely be compensable under chapter 11 of this title; and

(2) is determined by the Secretary to be in need of rehabilitation because of an employment handicap.

* * * * * * *

CHAPTER 32—POST-VIETNAM ERAS VETERANS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER III—ENTITLEMENT; DURATION

§ 1631. Entitlement; loan eligibility

(a)(1) * * *

* * * * * * *

(f)(1) Notwithstanding any other provision of this section, each individual who is pursuing a program of education consisting exclusively of flight training approved, as meeting the requirements of section 1641(b) of this title shall be paid a monthly benefit under this chapter in the amount equal to 60 percent of the established charges for tuition and fees (other than tuition and fees charged for or attributable to solo flying hours) which similarly circumstanced nonveterans enrolled in the same flight course are required to pay.

(2) No monthly benefit payment may be paid under this chapter to an individual for any month during which such individual is pursuing a program of education consisting exclusively of flight training until the Secretary has received from that individual and the institution providing such training a certification of the flight training received by the individual during that month and the tuition and other fees charged for that training.

(3) The number of months of entitlement charged in the case of any individual for a program of education described in paragraph (1) of this subsection shall be equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such program by the monthly rate of educational assistance which, except for paragraph (1) of this subsection, such individual would otherwise be paid under subsection (a) of this section.

§ 1632. Duration; limitations

(a)(1) * * *

* * * * * * *

(b)(1) In the event that an eligible veteran has not utilized any or all of such veteran's entitlement by the end of the delimiting period applicable to the veteran under subsection (a) of the **[**section,**]** *section and at the end of one year thereafter has not filed a* *claim for utilizing such entitlement,* such eligible veteran is automatically disenrolled.

* * * * * * *

SUBCHAPTER IV—ADMINISTRATION

§ 1641. Requirements

(a)(1) * * *

* * * * * * *

(b)(1) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 1673(b) of this title) by an individual entitled to basic education assistance under this chapter if—

(A) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

(B) the individual possesses a valid pilot's license and meets the medical requirements necessary for a commercial pilot's license; and

(C) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

(2) This subsection shall not apply to a course of flight training that commences on or after October 1, 1994.

[(b)**]** *(c)* The provisions of sections 1663, 1670, 1671, 1673, 1674, 1676, 1683, and 1691(a) (other than clause (1)) of this title and the provisions of chapter 36 of this title (with the exception of section 1787) shall be applicable with respect to individuals who are pursuing programs of education following discharge or release from active duty.

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CHAPTER 34—VETERANS' EDUCATIONAL ASSISTANCE

* * * * * * *

SUBCHAPTER I—PURPOSE; DEFINITIONS

* * * * * * *

§ 1652. Definitions

For the purposes of this chapter and chapter 36 of this title—

(a)(1) The term "eligible veterans" mean any veteran who—

(A) served on active duty for a period of more that 180 days, any part of which occurred after January 31, 1955, and before January 1, 1977, and was discharged or released therefrom under conditions other than dishonorable; or

(B) contracted with the Armed Forces and was enlisted in or assigned to a reserve component prior to January 1, 1977, and as a result of such enlistment or assignment served on active duty for a period of more than 180 days, any part of which commenced within 12 months after January 1, 1977, and was discharged or released from such active duty under conditions other than dishonorable; [or]

(C) was discharged or released from active duty , any part of which was performed after January 31, 1955, and before January 1, 1977, or following entrance into active service from an enlistment provided for under clause (B) of this paragraph, because of a service-connected [disability.] *disability; or*

(D)(i) before January 1, 1977, commenced the third academic year as a cadet or midshipman at one of the service academies or the third academic year as a member of the Senior Reserve Officers' Training Corps in a program of educational assistance under section 2104 or 2107 of title 10 if the individual (I) served on active duty for a period of more than 180 days pursuant to an appointment as a commissioned officer received upon graduation from one of the service academies or upon satisfactory completion of advanced training (as defined in section 2101 of title 10) as a member of the Senior Reserve Officers' Training Corps, respectively, and (II) was discharged or released from such period of active duty under conditions other than dishonorable; and

(ii) before January 1, 1990, submits to the Secretary of Veterans Affairs, in such form and manner as such Secretary may prescribe, an irrevocable election to be eligible after the date of such election for assistance under this chapter and, if enrolled under the chapter 32 program of educational assistance under this title at the time of such election, to be disenrolled from such program at that time.

(2) The requirement of discharge or release, prescribed in paragraph [(1)(A) or (B)] *(1)(A), (B), or (D),* shall be waived in the case of any individual who served more than one hundred and eighty days in an active duty status for so long as such individual continued on active duty without a break therein.

* * * * * * *

(4) For the purposes of this subsection, the term "service academies" means the United States Military Academy, the United States Naval Academy, the United States Air Force, and the United States Coast Guard Academy.

* * * * * * *

SUBCHAPTER IV—PAYMENTS TO ELIGIBLE VETERANS; VETERAN-STUDENT SERVICES

* * * * * * *

§ 1685. Work-study allowance

(a)(1) Individuals utilized under the authority of subsection (b) of this section shall be paid an additional educational assistance allowance (hereafter referred to as "work-study allowance"). Such work-study allowance shall be paid in an amount equal to the applicable hourly minimum wage times the number of hours worked during the applicable period, in return for such individual's agreement to perform services, during or between periods of enrollment, aggregating not more than a number of hours equal to 25 times the number of weeks in the semester or other applicable enrollment period, required in connection with [(1)] *(A)* the outreach services program under subchapter IV of chapter 3 of this title as carried out under the supervision of a Department of Veterans Affairs employee, [(2)] *(B)* the preparation and processing of necessary papers and other documents at educational institutions or regional offices or facilities of the Department of Veterans Affairs, [(3)] *(C)* the provision of hospital and domiciliary care and medical treatment under chapter 17 of this title, [(4)] *(D)* any other activity of the Department of Veterans Affairs as the Secretary shall determine appropriate, or [(5)] *(E)* in the case of an individual who is receiving educational assistance under chapter 106 of title 10, activities relating to the administration of such chapter at Department of [Defense] *Defense, Coast Guard, or National Guard* facilities. An individual shall be paid in advance an amount equal to 40 per centum of the total amount of the work-study allowance agreed to be paid under the agreement in return for the individual's agreement to perform the number of hours of work specified in the agreement.

(2) For the purposes of paragraph (1) of this [subsection,] *subsection and subsection (e) of this section,* the term "applicable hourly minimum wages" means (A) the hourly minimum wage under section 6(s) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a), or (B) the hourly minimum wage under comparable law of the State in which the services are to be performed, if such wage is higher than the wage referred to in clause (A) and the Secretary has made a determination to pay such higher wage.

(b) Notwithstanding any other provision of law, the Secretary [shall] *shall, subject to the provisions of subsection (e) of this section,* utilize, in connection with the activities specified in subsection (a)(1) of this section, the services of individuals who are pursuing programs of rehabilitation, education, or training under chapter 30, 31, 32 or 34 of this title or chapter 106 of title 10, at a rate equal to at least three-quarters of that required of a full-time student. In carrying out this section, the Secretary, wherever feasible, shall give priority to veterans with disabilities rated at 30 percent or more for purposes of chapter 11 of this title. In the event an individual ceases to be at least a three-quarter-time student before completing such agreement, the individual may, with the approval of the Secretary, be permitted to complete such agreement.

* * * * * * *

(e)(1) Subject to paragraph (2) of this subsection, the Secretary may, notwithstanding any other provision of law, enter into with an individual an agreement under this section, or a modification of such an agreement, whereby the individual agrees to perform services of the kind described in clauses (A) through (E) of subsection (a)(1) of this section and agrees that the Secretary shall, in lieu of paying the work-study allowance payable for such services, as provided in subsection (a) of this section, deduct the amount of the allowance from the amount which the individual has been determined to be indebted to the United States by virtue of such individual's participation in a benefits program under this chapter, chap-

ters 30, 31, 32, 35, or 36 (other than an education loan under subchapter III) of this title, or chapter 106 of title 10.

(2)(A) Subject to subparagraph (B) of this paragraph, the provisions of this section (other than those provisions which are determined by the Secretary to be inapplicable to an agreement under this subsection) shall apply to any agreement authorized under paragraph (1) of this subsection.

(B) For the purposes of this subsection, the Secretary may—

(i) waive, in whole or in part, the limitations in subsection (a) of this section concerning the number of hours and periods during which services can be performed by the individual and the provisions of subsection (b) of this section requiring the individual's pursuit of a program of rehabilitation, education, or training;

(ii) in accordance with such terms and conditions as may be specified in the agreement under this subsection, waive or defer charging interest and administrative costs pursuant to section 3115 of this title on the indebtedness to be satisfied by performance of the agreement; and

(iii) notwithstanding the indebtedness offset provisions of section 3114 of this title, waive, adjust, or defer until the termination of an agreement under this subsection the deduction of all or any portion of the amount of indebtedness covered by the agreement from future payments to the individual as described in section 3114 of this title.

(3)(A) Subject to the provisions of subparagraphs (B) and (C) of this paragraph, an agreement authorized under this subsection shall terminate in accordance with the provisions of this section and the terms and conditions of the agreement which are consistent with this subsection.

(B) In no event shall an agreement under this subsection shall continue in force after the total amount of the individual's indebtedness described in paragraph (1) of this subsection has been recouped, waived, or otherwise liquidated.

(C) Notwithstanding the provisions of subparagraphs (A) and (B) of this paragraph, if the Secretary finds that an individual was without fault and was allowed to perform services described in the agreement after its termination, the Secretary shall, as reasonable compensation thererfor, pay the individual at the applicable hourly minimum wage rate for such services as the Secretary determines were satisfactorily performed.

(4) The Secretary shall promulgate regulations to carry out this subsection.

* * * * * * *

CHAPTER 35—SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE

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SUBCHAPTER IV-PAYMENTS TO ELIGIBLE PERSONS

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§ 1732. Computation of educational assistance allowance

(a)(1) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(3) The monthly educational assistance allowance to be paid on behalf of an eligible person pursuing an independent study program which leads to a standard college degree shall be computed at the rate provided in subsection (a)(2) of this section for less than half-time but more than quarter-time pursuit. If the entire training is to be pursued by independent study, the amount of the eligible person's entitlement to educational assistance under this chapter shall be charged in accordance with the rate at which such person is pursuing the independent study program but at not more than the rate at which such entitlement is charged for pursuit of such program on less than a half-time basis. In any case in which independent study is combined with resident training, the educational assistance allowance shall be paid at the applicable institutional rate based on the total training time determined by adding the number of semester hours (or the equivalent thereof) of resident training to the number of semester hours (or the equivalent thereof) of independent study that do not exceed the number of semester hours (or the equivalent thereof) required for the less than half-time institutional rate, as determined by the [Secretary of Veterans Affairs,] *Secretary*, for resident training. An eligible person's entitlement shall be charged for a combination of independent study and resident training on the basis of the applicable monthly training time rate as determined under section 1788 of this title.

* * * * * * *

(e) In the case of an eligible person who is pursuing a program of education under this chapter while incarcerated in a Federal, State, or local penal institution for conviction of a felony, the educational assistance allowance shall be paid in the same manner prescribed in section 1682(g) of this title for incarcerated veterans, except that the references therein to the monthly educational assistance allowance prescribed for a veteran with no dependents shall be deemed to refer to the applicable allowance payable to an eligible person under corresponding provisions of this chapter or chapter 36 of this title, as determined by the [Secretary of Veterans Affairs.] *Secretary*.

§ 1733. Special assistance for the educationally disadvantaged

(a)(1) Any eligible person shall be entitled to the assistance provided an eligible veteran under section 1691(a) (if pursued in a State) of this title and be paid an educational assistance allowance therefor in the manner prescribed by section 1691(b) of this title, except that the corresponding rate provisions of this chapter shall apply, as determined by the [Secretary of Veterans Affairs,] *Secretary*, to such pursuit by an eligible person.

* * * * * * *

CHAPTER 36—ADMINISTRATION OF EDUCATIONAL BENEFITS

* * * * * * *

SUBCHAPTER I—STATE APPROVING AGENCIES

* * * * * * *

§ 1774. Reimbursement of expenses

(a)(1) Subject to paragraphs (2) through (4) of this subsection, the Secretary is authorized to enter into contracts or agreements with State and local agencies to pay such State and local agencies for reasonable and necessary expenses of salary and travel incurred by employees of such agencies and an allowance for administrative expenses in accordance with the formula contained in subsection (b) of this section in (A) rendering necessary services in ascertaining the qualifications of educational institutions for furnishing courses of education to eligible persons or veterans under this chapter and chapters 30 through 35 of this title and [chapters] *chapter* 106 [and 107] of title 10, and in the supervision of such educational institutions, and (B) furnishing, at the request of the Secretary any other services in connection with such chapters. Each such contract or agreement shall be conditioned upon compliance with the standards and provisions of such chapters. The Secretary may also reimburse such agencies for work performed by their subcontractors where such work has a direct relationship to the requirements of such chapters, and has had the prior approval of the Secretary.

* * * * * * *

SUBCHAPTER II—MISCELLANEOUS PROVISIONS

* * * * * * *

§ 1791. Change of program

(a) *An eligible veteran or an eligible person who has not made a change of program of education pursued by such veteran or person, as the case may be, may make one such change without the approval of the Secretary.* Except as provided in subsections (b) and (c) of this section, [each eligible veteran and eligible person may make not more than one change of program of education, but] an eligible veteran or eligible person whose program has been interrupted or discontinued due to the veteran's or person's own misconduct, the veteran's or person's own neglect, or the veteran's or person's own lack of application shall not be entitled to any such change.

(b) The Secretary may approve [one additional] *any* change [(or an initial] *in program (including any* change in the case of a veteran or person not [eligible] *entitled* to make a change under subsection [(a)) in program] *(a) of this section)* if the Secretary [finds that—] *finds—*

(1) the program of education which the eligible veteran or eligible person proposes to pursue is suitable to the veteran's or person's aptitudes, interests, and [abilities;] *abilities, determined, in the case of each change after the eligible veteran's or*

eligible person's first change, as provided in subsection (d) of this section; and

(2) in any instance where the eligible veteran or eligible person has interrupted, or failed to progress in, the veteran's or person's program due to the veteran's or person's own misconduct, the veteran's or person's own neglect, or the veteran's or person's own lack of application, there exists a reasonable likelihood with respect to the program which the eligible veteran or eligible person proposes to pursue that there will not be a recurrence of such an interruption or failure to progress.

(c) The Secretary may also approve [additional changes in] *any change of* program *of education* if the Secretary finds such [changes are] *change is* necessitated by circumstances beyond the control of the eligible veteran or eligible person.

(d) The Secretary may approve a second or subsequent change of program of education by an eligible veteran or eligible person only if—

(1) the veteran or person accepts educational or vocational counseling services referred to in section 1663 of this title; and

(2) the Secretary determines, on the basis of the results of the educational or vocational counseling, that the change is suited to the veteran's or person's aptitudes, interests, and abilities.

[(d)] *(e)* As used in this section the term "change of program of education" shall not be deemed to include a change from the pursuit of one program to pursuit of another where the first program is prerequisite to, or generally required for, entrance into pursuit of the second.

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CHAPTER 37—HOUSING AND SMALL BUSINESS LOANS

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SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

1820. Powers of Administrator.
1821. Incontestability.
1822. [REPEALED.] *Exemption from lobbying reporting requirements.*
1823. Direct loan revolving fund.
1824. Loan Guaranty Revolving Fund.
1825. Guaranty and Indemnity Fund.
1826. Withholding of payments, benefits, etc.
1827. Expenditures to correct or compensate for structural defects in mortgaged homes.
1828. Exemption from State anti-usury provisions.
1829. Loan fee.
1830. Use of attorneys in court.
1831. Appraisals.
1832. Procedure on default.
1833. Property Management.
1834. Annual submission of information on the Loan Guaranty Revolving Fund and the Guaranty and Indemnity Fund.
1835. Certificates of veteran status under the National Housing Act.

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SUBCHAPTER I—GENERAL

* * * * * * *

§ 1803. Basic provisions relating to loan guaranty and insurance

(a)(1)(A) Any loan to a veteran eligible for benefits under this chapter, if made for any of the purposes specified in section 1810 of this title and in compliance with the provisions of this chapter, is automatically guaranteed by the United States in an amount not to exceed the lesser of—

(i)(I) in the case of any loan of not more than $45,000, 50 percent of the loan;

(II) in the case of any loan of more than $45,000, but not more than $56,250, $22,500;

(III) *except as provided in subclause (IV) of this clause,* in the case of any loan of more than $56,250, [but not more than $144,000,] the lesser of $36,000 or 40 percent of the loan; or

(IV) in the case of any loan of more than $144,000 for a purpose specified in clause (1), (2), (3), [or (6)] *(6), or (8)* of section 1810(a) of this title, the lesser of $46,000 or 25 percent of the loan; or

(ii) the maximum amount of guaranty entitlement available to the veteran as specified in subparagraph (B) of this paragraph.

* * * * * * *

§ 1805. Warranties

(a) The Secretary shall require that in connection with any property upon which there is located a dwelling designed principally for not more than a four-family residence and which is [approved] *appraised* for guaranty or insurance before the beginning of construction, the seller or builder, and such other person as may be required by the Secretary to become warrantor, shall deliver to the purchaser or owner of such property a warranty that the dwelling is constructed in substantial conformity with the plans and specifications (including any amendments thereof, or changes and variations therein, which have been [approved] *appraised* in writing by the Secretary) on which the Secretary based the Secretary's valuation of the dwelling. The Secretary shall deliver to the builder, seller, or other warrantor the Secretary's written approval (which shall be conclusive evidence of such approval) of any amendment of, or change or variation in, such plans and specifications which the Secretary deems to be a substantial amendment thereof, or change or variation therein, and shall file a copy of such written approval with such plans and specifications. Such warranty shall apply only with respect to such instances of substantial nonconformity to such [approved] *appraised* plans and specifications (including any amendments thereof, or changes or variations therein, which have been [approved] *appraised* in writing, as provided in this section, by the Secretary) as to which the purchaser or home owner has given written notice to the warrantor within one year from the date of conveyance of title to, or initial occupancy of, the dwelling, whichever first occurs. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which such purchaser or owner may have under any other law or instrument. The provisions of this section shall apply to any such property covered by a mortgage insured or guaranteed by the Secretary on and after October 1, 1954, unless such mortgage is insured or guaranteed pursuant to a commitment therefor made before October 1, 1954.

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SUBCHAPTER III—ADMINISTRATIVE PROVISIONS

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§ 1822. Exemption from lobbying reporting requirements

An application for or the obtaining of a loan guaranteed, insured, or made under this chapter shall not be considered as a request for or the receipt of a Federal contract, grant, loan, loan guaranty, loan insurance, or cooperative agreement for purposes of any other law that requires persons requesting or receiving a Federal contract, grant, loan, loan guaranty, loan insurance, or cooperative agreement to report or declare payments made to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress.

* * * * * * *

§ 1831. Appraisals

(a) * * *

* * * * * * *

(f)(1) * * *

* * * * * * *

(3) The authority provided in this subsection shall terminate on October 1, [1990.] *1992.*

§ 1832. Procedure on default

(a)(1) * * *

* * * * * * *

(4)(A) Upon receiving a notice pursuant to paragraph (1) of this subsection, the Secretary shall—

(i) provide the veteran with information and, to the extent feasible, counseling regarding—

(I) alternatives to foreclosure, as appropriate in light of the veteran's particular circumstances, including possible methods of curing the default, conveyance of the property to the Secretary by means of a deed in lieu of foreclosure, and the actions authorized by paragraph (2) of this subsection, and

(II) what the Department of Veterans Affairs and the veteran's liabilities would be with respect to the loan in the event of foreclosure; and

(ii) advise the veteran regarding the availability of such counseling;

except with respect to loans made by a lender which the Administrator determined has a demonstrated record of consistently providing timely and accurate information to veterans with respect to such matters.

(B) The Secretary shall, to the extent of the availability of appropriations, ensure that sufficient personnel are available to administer subparagraph (A) of this paragraph effectively and efficiently.

[(C) The authority to carry out this paragraph shall terminate on March 1, 1991.]

* * * * * * *

(c)(1) * * *

* * * * * * *

[(11) This subsection shall cease to have effect on October 1, 1991.]

§ 1833. Property management

(a)(1) * * *

* * * * * * *

(3)(A) [Before October 1, 1990,] *Subject to subparagraph (C) of this paragraph,* notes evidencing such loans may be sold with or without recourse as determined by the Secretary, with respect to specific proposed sales of such notes, to be in the best interest of the effective functioning of the loan guaranty program under this chapter, taking into consideration the comparative cost-effectiveness of each type of sale. In comparing the cost-effectiveness of conducting a proposed sale of such notes with recourse or without recourse, the Secretary shall, based on available estimates regarding likely market conditions and other pertinent factors as of the time of the sale, determine and consider—

(i) the average amount by which the selling price for such notes sold with recourse would exceed the selling price for such notes if sold without recourse; and

(ii) the total cost of selling such notes with recourse, including—

(I) any estimated discount or premium;

(II) the projected cost, based on Department of Veterans Affairs experience with the sale of notes evidencing vendee loans with recourse and the quality of the loans evidenced by the notes to be sold, or repurchasing defaulted notes;

(III) the total servicing cost with respect to repurchased notes, including the costs of taxes and insurance, collecting monthly payments, servicing delinquent accounts, and terminating insoluble loans;

(IV) the costs of managing and disposing or properties acquired as the result of defaults on such notes;

(V) the loss or gain on resale of such properties; and

(VI) any other cost determined appropriate by the Secretary.

* * * * * * *

[(6) This subsection shall cease to have effect on December 31, 1990.]

[(7)] *(6)* The Secretary shall make a loan to finance the sale of real property described in paragraph (1) of this subsection at an interest rate that is lower than the prevailing mortgage market interest rate in areas where, and to the extent, the Secretary determines, in light of prevailing conditions in the real estate market involved, that such lower interest rate is necessary in order to market the property competitively and is in the interest of the long-term stability and solvency of the Department of Veterans Affairs Loan Guaranty Revolving Fund established by section 1824(a) of this title.

* * * * * * *

§ 1835. Certificates of veteran status under the National Housing Act

The Secretary, at the request of the Secretary of Housing and Urban Development, shall certify to the Secretary of Housing and Urban Development whether an applicant for assistance under the Naitonal Housing Act or any other law administered by the Secretary of Housing and Urban Development is a veteran. The Secretary shall issue certifications under this section without charge.

CHAPTER 41—JOB COUNSELING, TRAINING, AND PLACEMENT SERVICE FOR VETERANS

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§ 2001. Definitions

For the purposes of this chapter—

(1) The term "special disabled veteran" has the same meaning provided in section 2011(1) of this title.

(2) The term "veteran of the Vietnam Era" has the same meaning provided in section 2011(2) of this [title.] *title, except that a veteran may be considered to be a veteran of the Vietnam era for the purposes of this chapter until December 31, 1993.*

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PART IV—GENERAL ADMINISTRATIVE PROVISIONS

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CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER I—CLAIMS

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3002. Application forms furnished upon request.
3003. Incomplete applications.
3004. [Decisions and notices] *Notice* of decisions.
3005. Joint applications for social security and dependency and indemnity compensation.
3006. Furnishing of information by other agencies.
3007. Burden of proof; benefit of the doubt.
3008. Reopening disallowed claims.
3009. Independent medical opinions.

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§ 3004. [Decisions and notices] *Notice* of decisions

(a)(1) In the case of a decision by the Secretary under section 211(a) of this title affecting the provision of benefits to a claimant, the Secretary shall, on a timely basis, provide to the claimant (and to the claimant's representative) notice of such decision. The notice shall include an explanation of the procedure for obtaining review of the decision.

(2) In any case where the Secretary denies a benefit sought, the notice required by paragraph (1) of this subsection shall also include (A) a statement of the reasons for the decision, and (B) a summary of the evidence considered by the Secretary.

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CHAPTER 53—SPECIAL PROVISIONS RELATING TO BENEFITS

Sec.

3101. Nonassignability and exempt status of benefits.
3102. Waiver of recovery of claims by the United States.
3103. Certain bars to benefits.
3103A. Minimum active-duty service requirement.
3104. Prohibition against duplication of benefits.
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3109. Payment of certain withheld benefits.
3110. Payment of benefits for month of death.
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3112. Annual adjustment of certain benefit rates.
3113. Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony.
3114. Indebtedness offsets.
3115. Interest and administrative cost charges on delinquent payments of certain amounts due the United States.
3116. Authority to sue to collect certain debts.
3117. Protection of benefit applicants and recipients from improper use of certain information.

* * * * * * *

§ 3102. Waiver of recovery of claims by the United States

(a) There shall be no recovery of payments or overpayments (or any interest thereon) of any benefits under any of the laws administered by the Veterans' Administration whenever the Administrator determines that recovery would be against equity and good conscience, if an application for relief is made within 180 days from the date of notification of the indebtedness by the Administrator to the payee, or within such longer period as the Administrator determines is reasonable in a case in which the payee demonstrates to the satisfaction of the Administrator that such notification was not actually received by such payee within a reasonable period after such date. *The Secretary shall include in the notification to the payee a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.*

(b) With respect to any loan guaranteed, insured, or made under chapter 37 of this title, the Administrator shall, except as provided in subsection (c) of this section, waive payment of an indebtedness to the Veterans' Administration by the veteran (as defined in sections [101 and 1801),] *101, 1801, and 1802(a)(2)(C)(ii) of this title),* or the veteran's spouse, following default and loss of the property, where the Administrator determines that collection of such indebtedness would be against equity and good conscience. *An application for relief under this subsection must be made within one year after the date on which the Secretary notifies the payee of the indebtedness. The Secretary shall include in the notification a statement of the right of the payee to submit an application for a waiver under this subsection and a description of the procedures for submitting the application.*

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§ 3114. Indebtedness offsets

(a) Subject to subsections (b) and (d) of this [section,] *section and section 1685(e) of this title,* the Administrator shall (unless the Administrator waives recovery under section 3102 of this title) deduct the amount of the indebtedness of any person who has been determined to be indebted to the United States by virtue of such persons's participation in a benefits program administered by the Veterans' Administration from future payments made to such person under any law administered by the Veterans' Administration.

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§ 3115. Interest and administrative cost charges on delinquent payments of certain amounts due the United States

(a) Notwithstanding any other provision of this title or of any other law and subject to [section] *sections 1685(e) and* 3102 of this title, interest and administrative costs (as described in subsections (b) and (c) of this section) shall be charged, under regulations which the Administrator shall prescribe, on any amount owed to the United States—

(1) for an indebtedness resulting from a person's participation in a benefits program administered by the Veterans' Administration other than a loan, loan-guaranty, or loan-insurance program;

(2) for an indebtedness resulting from the provision of care or services under chapter 17 of this title; or

(3) to the extent not precluded by the terms of the loan instruments concerned, for an indebtedness resulting from a person's participation in a program of loans, loan guaranties, or loan insurance administered by the Veterans' Administration under this title.

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§ 3117. Protection of benefit applicants and recipients from improper use of certain information

(a)(1) In order to protect applicants for and recipients of the benefits and services described in paragraph (2) of this subsection from the improper use of information obtained from the Commissioner of

Social Security or the Secretary of the Treasury under section 6103(l)(7)(D)(viii) of the Internal Revenue Code of 1986 (26 U.S.C. 6103(l)(7)(D)(viii)), the Secretary may not terminate, deny, suspend, or reduce any such benefits or services of an individual until the Secretary has complied with the requirements in section 1137(c) of the Social Security Act (42 U.S.C. 1320b–7(c)), and such requirements shall be fully applicable in the case of such benefits and services.

(2) The benefits and services described in this paragraph are—

(A) needs-based pension benefits provided under chapter 15 of this title or under any other law administered by the Department of Veterans Affairs;

(B) parents' dependency and indemnity compensations provided under section 415 of this title;

(C) health-care services furnished under sections 610(a)(1)(I) and (2)(A), 610(b), and 612(a)(2)(B) of this title; and

(D) compensation pursuant to a rating of total disability awarded by reason of inability to secure or follow a substantially gainful occupation as a result of a service-connected disability, or service-connected disabilities, not rated as total.

(b) In the case of compensation described in subsection (a)(2)(D) of this section, the Secretary may independently verify or otherwise act upon wage or self-employment data referred to in subsection (a) of this section only if the Secretary finds that the amount and duration of the earnings reported therein clearly indicate that the individual may no longer be qualified for a rating of total disability.

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

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§ 3203. Hospitalized veterans and estates of incompetent institutionalized veterans

(a)(1)(A) Where any veteran having neither spouse nor child is being furnished domicilary care by the Veterans' Administration, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the end of the [third] *twelfth* full calendar month following the month of admission for such care.

(B) Except as provided in subparagraph (D) of this paragraph, where any veteran having neither spouse nor child is being furnished nursing home care by the Veterans' Administration, no pension in excess of $90 per month shall be paid to or for the veteran for any period after the end of the [third] *twelfth* full calendar month following the month of admission for such care.

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(E) Upon the discharge of a veteran from domiciliary care or nursing home care furnished by the Department, the veteran shall be paid a lump sum equal to the amount the veteran would have been paid except for subparagraph (A), (B), or (C), as the case may be, of this paragraph. Under regulations prescribed by the Secretary, so much of such amount may be paid to the veteran before the veteran is discharged from such care as is necessary to enable the veteran to make living arrangements in a location or facility other than a De-

partment facility. In no event may the amount paid to the veteran under this subparagraph exceed $10,000.

(b)(1)(A) In any case in which a veteran having neither spouse nor child is being furnished hospital treatment or institutional or domiciliary care without charge or otherwise by the United States, or any political subdivision thereof, is rated by the Veterans' Administration in accordance with regulations as being incompetent, and the veteran's estate (excluding the value of the veteran's home unless there is no reasonable likelihood that the veteran will again reside in such home), from any source equals or exceeds **[**$1,500**]** *$6,000,* further payments of pension, compensation, or emergency officers' retirement pay shall not be made until the estate is reduced to **[**$500**]** *$2,000.*

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CHAPTER 59—AGENTS AND ATTORNEYS

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§ 3404. Recognition of agents and attorneys generally

(a) * * *

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(c)(1)*(A)* In connection with a proceeding before the Veterans' Administration with respect to benefits under laws administered by the Veterans' Administration, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case. Such a fee may be charged, allowed, or paid in the case of services provided after such date only if an agent or attorney is retained with respect to such case before the end of the one-year period beginning on that date. The limitation in the preceding sentence does not apply to services provided with respect to proceedings before a court.

[(2)**]** *(B)* A person who, acting as agent or attorney in a case referred to in **[**paragraph (1)**]** *subparagraph (A)* of the subsection, represents a person before the Veterans' Administration or the Board of Veterans' Appeals after the Board first makes a final decision in the case shall file a copy of any fee agreement between them with the Board at such time as may be specified by the Board. The Board, upon its own motion or the request of either party, may review such a fee agreement and may order a reduction in the fee called for in the agreement if the Board finds that the fee is excessive or unreasonable. A finding or order of the Board under the preceding sentence may be reviewed by the United States Court of Veterans Appeals under section 4063(d) of this title.

(2) The provisions of this subsection shall apply only to cases involving a claim for benefits submitted by any person applying for benefits under the laws administered by the Department of Veterans Affairs, and such provisions shall not apply in cases in which the Government is proceeding against a person to collect an indebtedness or in which other attorneys' fees statutes apply.

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PART V—BOARDS AND DEPARTMENTS

CHAPTER	Sec.
71. Board of [Veterans'] *Veterans* Appeals	4001
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CHAPTER 71—BOARD OF [VETERANS'] *VETERANS* APPEALS

Sec.
4001. Composition of Board of [Veterans'] *Veterans* Appeals.
4002. Assignment of members of Board.
4003. Determinations by the Board.
4004. Jurisdiction of the Board.
4005. Filing of notice of disagreement and appeal.
4005A. Simultaneously contested claims.
4006. Administrative appeals.
4007. Docketing of appeals.
4008. Rejection of applications.
4009. Independent medical opinions.
4010. Traveling sections.

§ 4001. Composition of Board of [Veterans'] *Veterans* Appeals

(a) There shall be in the [Veterans' Administration] *Department* a Board of [Veterans'] *Veterans* Appeals (hereafter in this chapter referred to as the "Board") under the administrative control and supervision of a chairman directly responsible to the [Administrator.] *Secretary.* The Board shall consist of a Chairman, a Vice Chairman, and such number (not more than 65) of members as may be found necessary in order to conduct hearings and dispose of appeals properly before the Board in a timely manner. The Board shall have such other professional, administrative, clerical, and stenographic personnel as are necessary in conducting hearings and considering and disposing of appeals properly before the Board. The Board shall have sufficient personnel under the preceding sentence to enable the Board to conduct hearings and consider and dispose of appeals properly before the Board in a timely manner.

(b)(1) * * *

* * * * * * *

(2)(A) The other members of the Board (including the Vice Chairman) shall be appointed by the [Administrator,] *Secretary,* with the approval of the President, based upon recommendation of the Chairman. Each such member shall be appointed for a term of nine years.

(B) A member of the Board (other than the Chairman) may be removed by the [Administrator] *Secretary* upon the recommendation of the Chairman. In the case of a removal that would be covered by section 7521 of title 5 in the case of an administrative law judge, a removal of a member of the Board under this paragraph shall be carried out subject to the same requirements as apply to removal of an administrative law judge under that section. Section

554(a)(2) of title 5 shall not apply to a removal action, under the subparagraph. In such a removal action, a member shall have the rights set out in section 7513(b) of such title.

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(4) The [Administrator] *Secretary* shall designate one member of the Board as Vice Chairman. The Vice Chairman shall perform such functions as the Chairman may specify. Such member shall serve as Vice Chairman at the pleasure of the [Administrator.] *Secretary.*

(c)(1) Subject to paragraph (2) of this subsection, the Chairman may from time to time designate employees of the [Veterans' Administration] *Department* to serve as temporary members of the Board. Any such designation shall be for a period of not to exceed one year, as determined by the Chairman. An individual may not serve as a temporary member of the Board for more than 24 months during any 48-month perid.

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(3) In each annual report to the Congress under section 214 of this title, the [Administrator] *Secretary* shall provide detailed descriptions of the activities undertaken and plans made in the fiscal year for which the report is made with respect to the authority provided by paragraph (1) of this subsection. In each such report, the [Administrator] *Secretary* shall indicate, in terms of full-time employee equivalents, the number of temporary Board members designated under this subsection and the number of temporary Board members designated under this subsection and the number of acting Board members designated under section 4002(a)(2)(A)(ii) of this title during the year for which the report is made.

(d)(1) After the end of each fiscal year, the Chairman shall prepare a report on the activites of the Board during that fiscal year and the projected activities of the Board for the fiscal year during which the report is prepared and the next fiscal year. Such report shall be included in the documents providing detailed information on the budget for the [Veterans' Administration] *Department* that the [Administrator] *Secretary* submits to the Congress in conjunction with the President's budget submission for any fiscal year pursuant to section 1105 of title 31.

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§ 4002. Assignment of members of Board

(a)(1) * * *

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(2)(A) If a section is composed of fewer than three members as a result of the absence of a member or a vacancy on the Board or the inability of a member assigned to a section to serve on that section, the Chairman—

(i) may assign another member of the Board to the section;

(ii) may designate an employee of the [Veterans' Administration] *Department* to serve as an acting member of the Board on such section for a period of not to exceed 90 days, as determined by the Chairman; or

(iii) may direct the section to proceed with the transaction of business without awaiting the assignment of an additional member to the section.

* * * * * * *

§ 4004. Jurisdiction of the Board

(a) All questions in a matter which under section 211(a) of this title is subject to decision by the [Administrator] *Secretary* shall be subject to one review on appeal to the [Administrator.] *Secretary.* Final decisions on such appeals shall be made by the Board. The Board shall decide any such appeal only after affording the claimant an opportunity for a hearing. Decisions of the Board shall be based on the entire record in the proceeding and upon consideraiton of all evidence and material of record and applicable provisions of law and regulation.

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(c) The Board shall be bound in its decisions by the regulations of the [Veterans' Administration,] *Department,* instructions of the [Administrator,] *Secretary,* and the precedent opinions of the chief law officer.

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§ 4005. Filing of notice of disagreement and appeal

(a) Appellate review will be initiated by a notice of disagreement and completed by a substantive appeal after a statement of the case is furnished as prescribed in this section. Each appellant will be accorded hearing and representation rights pursuant to the provisions of this chapter and regulations of the [Administrator.] *Secretary.*

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(d)(1) * * *

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(3) Copies of the "statement of the case" prescribed in paragraph (1) of this subsection will be submitted to the claimant and to the claimant's representative, if there is one. The claimant will be afforded a period of sixty days from the date the statement of the case is mailed to file the formal appeal. This may be extended for a reasonable period on request for good cause shown. The appeal should set out specific allegations of error of fact or law, such allegations related to specific items in the statement of the case. The benefits sought on appeal must be clearly identified. The agency of original jurisdiction may close the case for failure to respond after receipt of the statement of the case, but questions as to timeliness or adequacy of response shall be determined by the Board of [Veterans'] *Veterans* Appeals.

(4) The claimant in any case may not be presumed to agree with any statement of fact contained in the statement of the case to which the claimant does not specifically express agreement.

(5) The Board of [Veterans'] *Veterans* Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed.

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§ 4006. Administrative appeals

Application of review on appeal may be made within the one-year period prescribed in section 4005 of this title by such officials of the [Veterans' Administration] *Department* as may be designated by the [Administrator]. *Secretary.* An application entered under this paragraph shall not operate to deprive the claimant of the right of review on appeal as provided in this chapter.

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§ 4009. Independent medical opinions

(a) When, in the judgment of the board, expert medical opinion, in addition to that available within the [Veterans' Administration,] *Department,* is warranted by the medical complexity or controversy involved in an appeal case, the Board may secure an advisory medical opinion form one or more independent medical experts who are not employees of the [Veterans' Administration.] *Department.*

(b) The [Administrator] *Secretary* shall make necessary arrangements with recognized medical schools, universities, or clinics to furnish such advisory medical opinions at the request of the Chairman of the Board. Any such arrangement shall provide that the actual selection of the expert or experts to give the advisory opinion in an individual case shall be made by an appropriate official of such institution.

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§ 4010. Traveling sections

A claimant may request a hearing before a traveling section of the Board. Any such hearing shall be scheduled for hearing before such a section within the area served by a regional office of the [Veterans' Administration] *Department* in the order in which the requests for hearing are received by the [Veterans' Administration] *Department* with respect to hearings in that area.

CHAPTER 72—UNITED STATES COURT OF VETERANS APPEALS

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SUBCHAPTER I—ORGANIZATION AND JURISDICTION

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§ 4052. Jurisdiction; finality of decisions

(a) The Court of Veterans Appeals shall have exclusive jurisdiction to review decisions of the Board of [Veterans'] *Veterans* Appeals. The [Administrator] *Secretary* may not seek review of any such decision. The court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the [Administrator] *Secretary* and the Board. The extent of the review shall be limited to the scope provided in section 4061 of this title. The Court may not review the schedule of ratings for disabilties adopted under section 355 of this title or any action of the [Administrator] *Secretary* in adopting or revising that schedule.

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SUBCHAPTER II—PROCEDURE

§ 4061. Scope of review

(a) In any action brought under this chapter, the Court of Veterans Appeals, to the extent necessary to its decision and when preented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the [Administrator;] *Secretary;*

(2) compel action of the [Administrator] *Secretary* unlawfully withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the [Administrator,] *Secretary,* the Board of [Veterans'] *Veterans* Appeals, or the Chairman of the Board found to be—

(A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law; and

(4) in the case of a finding of material fact made in reaching a decision in a case before the [Veterans' Administration] *Department* with respect to benefits under laws adminstered by the [Veterans' Administration,] *Department,* hold unlawful and set aside such finding if the finding is clearly erroneous.

* * * * * * *

(c) In no event shall findings of fact made by the [Administrator] *Secretary* or the Board of [Veterans'] *Veterans* Appeals be subject to trial de novo by the court.

(d) When a final decision of the Board of [Veterans'] *Veterans* Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the [Administrator,] *Secretary* the Court shall review only questions raised as to compliance with and the validity of the regulation.

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§ 4063. Representation of parties; fee agreements

(a) The [Administrator] *Secretary* shall be represented before the Court of Veterans Appeals by the General Counsel of the [Veterans' Administration.] *Department.*

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§ 4064. Rules of practice and procedure

(a) * * *

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(c) Section 455 of title 28 shall apply to judges and proceedings of the United States Court of Veterans Appeals.

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§ 4066. Notice of appeal

(a) In order to obtain review by the Court of Veterans Appeals of a final decision of the Board of [Veterans'] *Veterans* Appeals, a person adversely affected by that action must file a notice of appeal with the Court. Any such notice must be filed within 120 days after the date on which notice of the decision is mailed pursuant to section 4004(e) of this title.

(b) The appellant shall also furnish the [Administrator] *Secretary* with a copy of such notice, but a failure to do so shall not constitute a failure of timely compliance with subsection (a) of this section.

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§ 4067. Decisions

(a) * * *

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(e) The Court shall designate in its decision in any case those specific records of the Government on which it relied (if any) in making its decision. The [Administrator] *Secretary* shall preserve records so designated for not less than the period of time designated by the Administrator of the National Archives and Records Administration.

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SUBCHAPTER IV—DECISIONS AND REVIEW

§ 4091. Date when United States Court of Veterans Appeals decision becomes final

(a) * * *

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(b)(1) If the Supreme Court directs that the decision of the Court of Veterans Appeals be modified or reversed, the decision of the Court of Veterans Appeals rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of 30 days from the time it was rendered, unless within such 30 days either the [Administrator] *Secretary* or the petitioner has instituted proceedings to have such decision corrected to accord with the mandate, in which event the decision of the Court of Veterans Appeals shall become final when so corrected.

(2) If the decision of the Court of Veterans Appeals is modified or reversed by the United States Court of Appeals for the Federal Circuit and if—

(A) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or

(B) the petition for certiorari has been denied, or

(C) the decision of the United States Court of Appeals for the Federal Circuit has been affirmed by the Supreme Court,

then the decision of the Court of Veterans Appeals rendered in accordance with the mandate of the United States Court of Appeals for the Federal Circuit shall become final upon the expiration of 30 days from the time such decision of the Court of Veterans Appeals was rendered, unless within such 30 days either the [Administrator] *Secretary* or the petitioner has instituted proceedings to have such decision corrected so that it will accord with the mandate, in which event the decision of the Court of Veterans Appeals shall become final when so corrected.

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§ 4092. Review by United States Court of Appeals for the Federal Circuit

(a) * * *

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(b)(1) When a judge or panel of the Court of Veterans Appeals, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is in fact a disagreement between the appellant and the [Administrator] *Secretary* with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the Court of Veterans Appeals. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the Court of Veterans Appeals, unless a stay is ordered by a judge of the Court of Veterans Appeals or by the Court of Appeals for the Federal Circuit.

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CHAPTER 73—DEPARTMENT OF MEDICINE AND SURGERY

SUBCHAPTER I—ORGANIZATION; GENERAL

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4113. Travel expenses of [employees.] *certain employees; continuing professional education of physicians and dentists.*
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[4121.] *4131.* Designation of Regional Medical Education Centers.
[4122.] *4132.* Supervision and staffing of Centers.
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SUBCHAPTER I—ORGANIZATION; GENERAL

§ 4101. Functions of Department

(a) * * *

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(g)(1) The purposes of this subsection are (A) to improve and expand the capability of Department of Veterans Affairs health-care facilities to respond with the most effective and appropriate services possible to the needs of veterans suffering from mental illness, especially from service-related conditions, and (B) to advance scientific knowledge regarding mental illness, especially service-related conditions, and regarding such needs and the methods of meeting them by facilitating higher quality care for eligible veterans suffering from mental illness, especially from service-related conditions, through research, the education and training of health personnel in the provision of health care to such veterans, and the development of improved models of clinical services for eligible veterans suffering from mental illness.

(2)(A) In order to carry out the purposes of this subsection, the Secretary, upon the recommendation of the Chief Medical Director and pursuant to the provisions of this subsection, shall designate not more than five health-care facilities of the Department of Veterans Affairs (at least one of which shall be designated before July 1, 1991) as the locations for centers of mental illness research, education, and clinical activities and (subject to the appropriation of sufficient funds for such purpose) shall establish and operate such centers at such locations in accordance with this subsection.

(B) In designating facilities as the locations for centers under subparagraphs (A) of this paragraph, the Secretary, upon the recommendation of the Chief Medical Director, shall ensure appropriate geographic distribution of such facilities.

(C) The Secretary may not designate any health-care facility as a location for a center under subparagraph (A) of this paragraph unless the Secretary, upon the recommendation of the Chief Medical Director, determines that the facility has (or may reasonably be anticipated to develop)—

(i) with an accredited medical school which provides education and training in psychiatry and with which such facility is affiliated, an arrangement under which residents receive education and training in psychiatry through regular rotation through such center so as to provide such residents with training in the diagnosis and treatment of mental illness;

(ii) with an accredited graduate school of psychology which provides education and training in clinical or counseling psychology or both and with which the facility is affiliated, an arrangement under which students receive education and training in clinical or counseling psychology or both through regular rotation through such center so as to provide such students with training in the diagnosis and treatment of mental illness;

(iii) an arrangement under which nursing, social work, or other allied health personnel receive training and education in mental health care through regular rotation through such facility;

(iv) the ability to attract the participation of scientists who are capable of ingenuity and creativity in research into the causes, treatment, and prevention of mental illness and into models for furnishing care and treatment to veterans suffering from mental illness;

(v) a policymaking advisory committee composed of appropriate mental health care and research representatives of the facility and of the affiliated school or schools to advise the directors of such facility and such center on policy matters pertaining to the activities of such center during the period of the operation of such center; and

(vi) the capability to conduct effectively evaluations of the activities of such center.

(3) There are authorized to be appropriated for the basis support of the research and education and training activities of the centers established pursuant to paragraph (1) of this subsection $3,125,000 for fiscal year 1991 and $6,250,000 for each of the next three fiscal years. The Chief Medical Director shall allocate to such centers from other funds appropriated generally for the Department of Veterans Affairs medical care account and medical and prosthetics research account such amounts as the Chief Medical Director determines appropriate.

(4) Activities of clinical and scientific investigation at each center shall be eligible to compete for the award of funding from amounts appropriated for the Department of Veterans Affairs medical and prosthetics research account and shall receive priority in the award of funding from such account insofar as funds are awarded to projects for mental illness.

(5) The Chief Medical Director shall ensure that research activities carried out through such centers include an appropriate emphasis on the psychosocial dimension of mental illness and on models for furnishing care and treatment to veterans suffering from mental illness.

(6) The Chief Medical Director shall ensure that useful information produced by the research, education and training, and clinical activities of such centers is disseminated throughout the Veterans Health Services and Research Administration through the development of programs of continuing medical and related education provided through regional medical education centers under subchapter II of chapter 73 of this title and other means.

(7) The official within the Central Office of the Veterans Health Services and Research Administration responsible for mental health and behavioral sciences matters shall be responsible for the supervision of the operation of the centers established pursuant to paragraph (1) of this subsection.

* * * * * * *

§ 4107. Grade and pay scales

(a) * * *

* * * * * * *

(b)(1) The grades and annual ranges of rates of basic pay for positions provided for in paragraph (1) of section 4104 of this title shall be prescribed from time to time by Executive order as authorized by chapter 53 of title 5 or as other authorized by law:

PHYSICIAN AND DENTIST SCHEDULE

Director grade.
Executive grade.
Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

NURSE SCHEDULE

[Director grade.
[Assistant Director grade.
[Chief grade.
[Senior grade.
[Intermediate grade.
[Full grade.
[Associate grade.
[Junior grade.]
Three or more grades, as prescribed by the Chief Medical Director pursuant to paragraph (3) of this subsection.

CLINICAL PODIATRIST AND OPTOMETRIST SCHEDULE

Chief grade.
Senior grade.
Intermediate grade.
Full grade.
Associate grade.

*   *   *   *   *   *   *

(3) The Chief Medical Director shall prescribe the number of grades and the number of steps within grades for nurse positions.

(c) Notwithstanding the provisions of section 4101(e) of this title, any person appointed under section 4103 of this title who is not eligible for special pay under [section 4118 of this title] *subchapter II of this chapter* shall be deemed to be a career appointee for the purposes of sections 4507 and 5384 of title 5.

(d) Notwithstanding any other provision of law, and except as provided in [sections 4118 and] *section* 4120 of this [title,] *title and subchapter II of this chapter* pay may not be paid at a rate in excess of the rate of basic pay for an appropriate level authorized by section 5314, 5315, or 5316 or title 5 for positions in the Executive Schedule, as follows:

(1) Level III for the Chief Medical Director;

(2) Level IV for the Deputy Chief Medical Director; and

(3) Level V for all other positions for which such basic pay is paid under this section.

(e)(1) In addition to the rate of basic pay provided for [nurses in subsection (b)(1) of this section,] *nurses,* a nurse shall receive additional pay as provided by paragraphs (2) through (8) *and paragraph (11)* of this subsection.

(5) A nurse [performing] *who performs* officially ordered or approved hours of service in excess of forty hours in an administrative workweek, or in excess of eight hours in a day, shall receive overtime pay for each hour of such additional [service; the] *service. The rate of* overtime [rates] *pay for such nurse* shall be one and one-half times such nurse's hourly rate of basic [pay, not to exceed one and one-half times the hourly rate of basic pay for the minimum rate of Intermediate grade of the Nurse Schedule.] *pay.* For the purposes of this paragraph, overtime must be of at least fifteen minutes duration in a day to be creditable for overtime pay. Compensatory time off in lieu of pay for service performed under the provisions of this paragraph shall not be permitted, except as voluntarily requested in writing by the nurse in question. Any excess service performed under this paragraph on a day when service was not scheduled for such nurse, or for which such nurse is required to return to the nurse's place of employment, shall be deemed to be a minimum of two hours in duration. For the purposes of this paragraph, the period of a nurse's officially ordered or approved travel away from such nurse's duty station may not be considered to be hours of service unless—

(A) such travel occurs during such nurse's tour of duty; or

(B) such travel (i) involves the performance of services while traveling, (ii) is incident to travel that involves the performance of services while traveling, (iii) is carried out under arduous conditions as determined by the Administrator, or (iv) results from an event which could not be scheduled or controlled administratively.

(6) For the purpose of computing the additional pay provided by paragraph (2), (3), (4), *(5),* or [(5)] *(11)* of this subsection, a nurse's hourly rate of basic pay shall be derived by dividing such nurse's annual rate of basic pay by two thousand and eighty.

(7) When a nurse is entitled to two or more forms of additional pay under paragraph (2), (3), (4), *(5),* or [(5)] *(11)* for the same period of service, the amounts of such additional pay shall be computed separately on the basis of such nurse's hourly rate of basic pay, except that no overtime pay as provided in paragraph (5) shall be payable for overtime service performed on a holiday designated by Federal statute or Executive order in addition to pay received under paragraph (4) for such service.

* * * * * * *

(9) Any additional pay paid pursuant to this [subsection] *subsection, other than pay under paragraph (11) of this subsection,* shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of subchapter IX of chapter 55, chapter 81, 83, *84,* or 87 of title 5, or other benefits based on basic pay.

* * * * * * *

(11) A nurse shall be paid additional pay equal to 6 percent of the nurse's hourly rate of basic pay for each hour of service performed as a head nurse. The preceding sentence shall not apply to a nurse who is assigned to perform service as a head nurse for a period of less than 30 consecutive days.

(f) Physician assistants and expanded-function dental auxiliaries shall be compensated by use of Nurse Schedule grade titles and related pay ranges and shall be entitled to additional pay on the same basis as provided for nurses in subsection (e) of this section. Notwithstanding any other provision of law, when the Administrator determines it to be necessary in order to obtain or retain the services of certified or registered respiratory therapists, licensed physical therapists, licensed practical or vocational nurses, pharmacists, [or] occupational therapists, *or any other health-care personnel furnishing direct care to patients or providing services incident to the furnishing of direct care to patients*, the Administrator may, on a nationwide, local, or other geographic basis, pay persons employed in such positions additional pay on the same basis as provided for nurses in subsection (e) of this section. The Administartor shall prescribe by regulation standards for compensation and payment under this subsection.

(g)(1) * * *

* * * * * * *

(3)*(A)* The amount of any increase under paragraph (1) of this subsection in the maximum rate for any grade may not (except in the case of nurse anesthetists and licensed physical therapists) exceed *by two times* the amount by which the maximum for such grade (under applicable provisions of law other than this subsection) exceeds the minimum for such grade (under applicable provisions of law other than this subsection), and the maximum rate as so increased may not exceed the rate paid for individuals serving as Assistant Chief Medical Director.

(B) Whenever the amount of an increase under paragraph (1) of this subsection results in a rate of basic pay for a position being equal to or greater than the amount that is 94 percent of the maximum amount permitted under subparagraph (A) of this paragraph, the Secretary shall promptly notify the Committees on Veterans' Affairs of the Senate and House of Representatives of the increase and the amount thereof.

* * * * * * *

(k)(1) Except as provided in paragraph (2) of this subsection, the Secretary shall pay each nurse who is recertified in the speciality in which the nurse is employed a lump-sum payment equal to 1 percent of the annual salary of the nurse (as of the time the nurse is recertified). The Secretary shall make such payment when the nurse is recertified.

(2) A payment may not be paid to a recertified nurse under this subsection if the performance rating for such nurse for the lastest rating period ending before the date of the recertification is less than satisfactory.

(3) A special payment under this subsection shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this title.

§ 4107A. Competitive pay rates for certain nurse and other health-care professional positions

(a)(1) It is the purpose of this section to ensure, by a means providing maximum flexibility to directors of Department of Veterans Affairs health-care facilities, that the rates of basic pay for health-care professional positions described in paragraph (2) of this subsection in each such facility (including the rates of basic pay of personnel employed in such positions on a part-time basis) are sufficient for such health-care facility to be competitive, on the basis of pay and other employee benefits, with non-Department health-care facilities in the recruitment and retention of qualified personnel for such positions.

(2) The health-care professional positions referred to in paragraph (1) of this subsection are registered nurse positions, registered nurse anesthetist positions, certified registered nurse anesthetist positions and the positions for such other health-care professionals referred to in clauses (1) and (3) of section 4104 of this title as the Secretary may determine upon the recommendation of the Chief Medical Director.

(b) The Secretary shall ensure that, for pay periods beginning on or after July 1, 1991, the rates of basic pay for covered positions in the Department are established in accordance with this section instead of section 4107(b)(1) of this title.

(c)(1) Not later than June 1, 1991, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

> *(A) conduct a survey in accordance with this subsection; and*
>
> *(B) on the basis of such survey, establish the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out the purpose of this section.*

(2) The rates of basic pay established pursuant to paragraph (1) of this subsection shall become effective beginning with the first pay period that begins on or after July 1, 1991.

(3) Not later than December 1 of each year after 1990, the director of each Department health-care facility shall, with respect to the covered positions in each category of covered positions—

> *(A) conduct a survey in accordance with this subsection; and*
>
> *(B) on the basis of such survey—*
>
> > *(i) determine whether it is necessary to adjust the rates of basic pay for such covered positions at such facility in order to carry out the purpose of this section; and*
> >
> > *(ii) effective with the first pay period that begins on or after January 1 of the next year, adjust the rates of basic pay in each pay grade provided for such positions in accordance with this section as necessary to carry out such purpose.*

(4)(A) In the case of the covered positions in each category of covered positions in a Department health-care facility, the director of that facility shall survey the entry-level compensation established for the corresponding health-care professional positions in comparable non-Department health-care facilities within the same labor market area as that Department health-care facility. The Secretary

shall specify in regulations the criteria for determining the number of comparable non-Department health-care facilities to be included in the survey.

(B) If the number of non-Department health-care facilities comparable to a Department health-care facility in the same labor market area is less than the number determined in accordance with the criteria specified pursuant to subparagraph (A) of this paragraph or is less than the director of that Department health-care facility considers necessary in order to produce a valid comparison, such director shall, in the case of the covered positions referred to in such subparagraph, survey—

(i) the entry-level compensation established for the corresponding health-care professional positions in such comparable non-Department health-care facilities as are located within that labor market area; and

(ii) the entry-level compensation established for the corresponding health-care professional positions in other non-Department health-care facilities within that labor market area.

(C) For the purposes of this paragraph, a non-Department health-care facility is comparable to a Department health-care facility if the director of the Department health-care facility determines, in accordance with regulations prescribed by the Secretary, that the non-Department health care facility (i) is in direct competition with the Department health-care facility for the recruitment and retention of personnel qualified for employment in covered positions, and (ii) has other characteristics that are comparable to the characteristics of a Department health-care facility.

(5)(A) Except as provided in subparagraph (B) of this paragraph, the director of a Department health-care facility shall ensure that an appropriate cost-of-living adjustment is provided for in adjustments of rates of pay that are made for years following 1991 pursuant to a survey under this subsection.

(B) The director of a Department health-care facility may waive, in whole or in part, with respect to any rate of basic pay for a covered position the cost-of-living component of any adjustment for any year in which the cost-of-living adjustment is not necessary, in whole or in part (as the case may be), in order for that rate of pay to be competitive.

(d)(1) If the director of a Department health-care facility determines in any year that, because of an insufficiency in the number of non-Department health-care facilities or non-Department covered positions, a survey under subsection (c) of this section would not provide a valid comparison with respect to the covered positions in the director's facility, the director shall establish or adjust the rates of basic pay for the covered positions in the director's facility as provided in this subsection instead of subsection (c) of this section.

(2) Not later than 90 days before the date on which the director of a Department health-care facility establishes or adjusts rates of basic pay pursuant to paragraph (1) of this subsection, the director shall—

(A) identify a labor market area that is similar to the labor market area of such facility and includes a Department health-care facility; and

(B) notify the Chief Medical Director of the labor market identified pursuant to clause (A) of this paragraph.

(3) The director of a health-care facility referred to in paragraph (1) of this subsection shall prescribe the same rates of basic pay for the covered positions in the director's facility as are prescribed for the same covered positions in the Department health-care facility located in the identified labor market area unless the selection of that labor market area for the purpose of this subsection is disapproved by the Chief Medical Director in accordance with paragraph (5) of this subsection.

(4) If the Chief Medical Director disapproves (in accordance with paragraph (5) of this subsection) the selection of a labor market area by the director of a health-care facility for the purpose of this subsection, the director of that facility shall prescribe the same rates of basis pay for the covered positions in that facility as are prescribed for the Department health-care facility in a labor market area which the Chief Medical Director shall designate. The Chief Medical Director may designate any labor market area that the Chief Medical Director determines to be similar to the labor market area of the director's health-care facility.

(5) Not later than 60 days after receiving a notification from the director of a Department health-care facility under paragraph (2)(B) of this subsection, the Chief Medical Director shall—

(A) approve the selection of the labor market area identified in the notification; or

(B) disapprove the selection of that labor market area, designate another labor market area determined by the Chief Medical Director to be similar to the labor market area of the director's health-care facility, and notify that facility director of that designation.

(6) In order for a labor market area to be determined similar to the labor market area of a Department health-care facility for the purposes of this subsection, both labor market areas must be similar in size, demographic characteristics, and labor market characteristics.

(e)(1) When the director of a Department health-care facility establishes or adjusts the rates of basic pay for a grade for any category of positions at such facility in order to carry out the purpose of this section, the director shall specify the minimum rate of basic pay for such grade and, subject to paragraph (3) of this subsection, increase or reduce the other rates of basic pay for such grade to amounts that bear the same relationship to the specified minimum rate of basic pay and to each other as the rates of basic pay within such grade bear to each other before the increase or reduction, as the case may be.

(2) The minimum rate of basic pay prescribed for a grade for the positions in any category of covered positions in a Department health-care facility on the basis of a survey conducted under subsection (c) of this section shall be sufficient for the pay and other employee benefits of the health-care professionals employed in such positions in such grade to be competitive with the entry-level compensation (but may not exceed the highest rate of entry-level pay established) for the corresponding health-care professional positions in

non-Department health-care facilities in the same labor market area, as ascertained by the director of such facility in such survey.

(3)(A) Except as provided in subparagraph (C) of this paragraph, the maximum rate of basic pay for any grade designated by the Secretary, upon the recommendation of the Chief Medical Director, as the entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for grade 13 of the General Schedule under section 5332 of title 5.

(B) The maximum rate of basic pay for any grade other than an entry-level grade for any category of covered positions may not exceed the maximum rate of basic pay established for a position in level V of the Executive Schedule under section 5316 of title 5.

(C) The limitation prescribed by subparagraph (A) of this paragraph shall not apply to the entry-level grade for any category of covered positions if the positions have been designated by the Chief Medical Director as supervisory or managerial positions. The maximum rate prescribed by subparagraph (B) of this paragraph shall apply to such entry-level grade.

(4) Whenever a grade is added to the schedule of grades for covered positions in any category of covered positions or a step within grade is added to a grade in such schedule, the director of a Department health-care facility shall establish the rates of basic pay for that grade or the rate of pay for that step, as the case may be, in the same manner as the rates of pay are established and adjusted under the other provisions of this subsection. The rates of basic pay for the additional grade shall bear the same relationship to the minimum rate of basic pay specified for such grade and to each other as the rates of basic pay within each other grade in such schedule bear to each other. The rate of pay for an additional step within grade shall bear the same relationship to the other rates of basic pay within such grade as such other rates bear to each other.

(f) An employee who is paid a rate of basic pay established under this section and who is transferred (voluntarily or otherwise) from a covered position in one Department health-care facility to a covered position in another Department health-care facility shall be paid the rate of basic pay in effect for the covered position at the health-care facility to which the employee is transferred for the same grade and the same step within that grade as was applicable to that employee immediately before the transfer, if the Chief Medical Director determines that the duties of the position to which the employee is transferred are at least comparable to the duties of the position from which the employee was transferred.

(g)(1) Rates of basic pay may be increased or reduced under this section.

(2) A reduced rate of basic pay established for a covered position under this subsection shall not apply to an employee serving in such position at a Department health-care facility on the day before the effective date of the reduced rate. That employee shall continue to be paid at a rate of basic pay not less than the rate of basic pay applicable to that employee on such day for as long as the employee continues to serve in such position at such facility.

(h)(1) In developing the criteria for the conduct of surveys under subsection (c) for application by all Department health-care facilities, the Secretary shall consult with representatives of each labor

organization accorded exclusive recognition under chapter 71 of title 5 for a unit that includes employees whose rates of pay are to be established on the basis of such surveys.

(2) In the case of employees in covered positions in a unit in a particular Department health-care facility with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, the director of the health-care facility shall consult with the representatives of such labor organization on—

(A) the criteria developed by the director of that health-care facility for the conduct of surveys under subsection (c);

(B) the director's plans for the collection of data in conducting surveys; and

(C) the determinations regarding specific rates of basic pay.

(i) The establishment and adjustment of rates of basic pay under this section for covered positions does not limit the authority of the Secretary to pay bonuses under section 4120 of this title to employees appointed to such positions.

(j)(1) Not later than March 1 of each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the exercise of the authority provided in this section for the immediately preceding calendar year.

(2) The report shall contain an assessment of the effects of the exercise of such authority on the ability of the Department to recruit and retain qualified health-care professionals for covered positions. The Secretary shall include in the report recommendations for such additional legislation to facilitate the recruitment and retention of qualified health-care professionals for such positions as the Secretary considers necessary or appropriate.

(3) If the authority provided in this section was exercised for the year covered by the report only to adjust the rates of basic pay for nurse positions, the report shall also contain the reasons that rates of basic pay were not adjusted for other health-care professional positions under such authority for such year and any plans for adjusting the rates of basic pay for other health-care professional positions under such authority.

(k)(1) The Secretary, upon the recommendation of the Chief Medical Director, shall prescribe regulations setting forth criteria and procedures to carry out this section. Such regulations shall provide maximum flexibility for the director of each Department health-care facility. Documentation requirements in such regulations shall be minimal.

(2) If the Secretary fails to prescribe final regulations under this subsection before April 1, 1991, the Secretary shall, not later than such date, prescribe interim final regulations for the purposes of this subsection. Such regulations shall be effective upon issuance and shall remain in effect until the effective date of final regulations issued for the purposes of this subsection.

(3) If neither final regulations nor interim final regulations are prescribed under this subsection before April 1, 1991, the director of each Department health-care facility shall, nevertheless, make determinations and establish and adjust rates of basic pay under this section with respect to covered positions in such facility for 1991 and subsequent years. In the case of any determination or other

action which is subject to criteria or procedures to be prescribed in such regulations, the director of each such facility shall apply such criteria and follow such procedures as the director considers appropriate and consistent with this section. Each such director shall apply the final regulations when issued.

(l) Information collected in surveys conducted under this section are not subject to disclosure under section 552 of title 5.

(m) For the purposes of this subsection—

(1) the term "covered position" means a position referred to in subsection (a)(1) of this section;

(2) the term "health-care facility" means a hospital or an independent outpatient clinic;

(3) the term "entry-level compensation," with respect to corresponding health-care professional positions in non-Department health-care facilities, means—

(A) the minimum rate of pay established for professionals in such positions who have education, training, and experience equivalent or similar to the education, training, and experience required for health-care professionals employed in the same category of Department covered positions; and

(B) the other pecuniary employment benefits, if any, provided for the non-Department health-care professionals paid such minimum rate of pay; and

(4) the term "corresponding," with respect to health-care professional positions in non-Department health-care facilities, means those positions for which the education, training, and experience requirements are equivalent or similar to the education, training, and experience requirements for health-care professional positions in Department health-care facilities.

§ 4108. Personnel administration

(a) Notwithstanding any law, Executive order, or regulation, *except as provided in subsection (f) of this section,* the **[**Administrator**]** *Secretary* shall prescribe by regulation the hours and conditions of employment and leaves of absence of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries appointed to the **[**Department of Medicine and Surgery,**]** *Veterans Health Services and Research Administration,* except that the hours of employment in carrying out responsibilities under this title of any physician, dentist, podiatrist, optometrist (other than an intern or resident appointed pursuant to section 4114 of this title), nurse, physician assistant, or expanded-function dental auxiliary appointed on a full-time basis who accepts responsibilities for carrying out professional services for remuneration other than those assigned under this title, shall consist of not less than eighty hours in a biweekly pay period (as that term is used in section 5504 of title 5), and no such person may—

(1) assume responsibility for the medical care of any patient other than a patient admitted for treatment at a **[**Veterans' Administration**]** *Department of Veterans Affairs* facility, except in those cases where the person, upon request and with the approval of the Chief Medical Director, assumes such responsibilities to assist communities or medical practice groups

to meet medical needs which would not otherwise be available for a period not to exceed one hundred and eighty calendar days, which may be extended by the Chief Medical Director for additional periods not to exceed one hundred and eighty calendar days each;

(2) teach or provide consultative services at any affiliated institution if such teaching or consultation will, because of its nature or duration, conflict with such person's responsibilities under this title;

(3) accept payment under any insurance or assistance program established under subchapter XVIII, or XIX of chapter 7 of title 42, or under chapter 55 of title 10 for professional services rendered by such person while carrying out such person's responsibilities under this title;

(4) accept from any source, with respect to any travel performed by such person in the course of carrying out such person's responsibilities under this title, any payment or per diem for such travel, other than as provided for in section 4111 of title 5;

(5) request or permit any individual or organization to pay, on such person's behalf for insurance insuring such person against malpractice claims arising in the course of carrying out such person's responsibilities under this title or for such person's dues or similar fees for membership in medical or dental societies or related professional associations, except where such payments constitute a part of such person's remuneration for the performance of professional responsibilities permitted under this section, other than those carried out under this title; and

(6) perform, in the course of carrying out such person's responsibilities under this title, professional services for the purpose of generating money for any fund or account which is maintained by an affiliated institution for the benefit of such institution, or for such person's personal benefit, or both, and in the case of any such fund or account established before September 1, 1973—

(A) the affiliated institution shall submit semiannually an accounting to the [Administrator] *Secretary* and to the Comptroller General of the United States with respect to such fund or account, and thereafter shall maintain such fund or account subject to full public disclosure and audit by the [Administrator] *Secretary* and the Comptroller General for a period of three years or for such longer period as the [Administrator] *Secretary* shall prescribe, and

(B) no physician, dentist, podiatrist, optometrist, nurse, physician assistant, or expanded-function dental auxiliary may receive, after September 1, 1973, any cash from amounts deposited in such fund or account derived from services performed prior to the effective date of this subsection.

(b) Any person serving as a Chief of Staff of a [Veterans' Administration] *Department of Veterans Affairs* health-care facility shall be appointed on a full-time basis.

(c) As used in this section:

(1) The term "affiliated institution" means any medical school or other institution of higher learning with which the [Administrator] *Secretary* has a contract or agreement as referred to in section 4112(b) of this title for the training or education of health personnel.

(2) The term "remuneration" means the receipt of any amount of monetary benefit from any [non-Veterans' Administration] *non-Department of Veterans Affairs* source in payment for carrying out any professional responsibilities.

(d) Notwithstanding any other provision of law, *except as provided in subsection (f) of this section,* the [Administrator] *Secretary* may prescribe regulations establishing conditions under which officers and employees of the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* who are nationally recognized principal investigators in medical research may be permitted, in connection with their attendance at meetings or in performing advisory services concerned with the functions or activities of the [Veterans' Administration,] *Department of Veterans Affairs,* or in connection with acceptance of significant awards or with activity related thereto concerned with functions or activities of the [Veterans' Administration,] *Department of Veterans Affairs,* to accept payment, in cash or in kind, from non-Federal agencies, organizations, and individuals, for travel and such reasonable subsistence expenses as are approved by the [Administrator] *Secretary* pursuant to such regulations, to be retained by such officers and employees to cover the cost of such expenses or deposited to the credit of the appropriation from which the cost of such expenses is paid, as may be provided in such regulations.

* * * * * * *

(f) The provisions of chapter 71 of title 5 shall apply to the exercise of the Secretary's authority under this section except with respect to—

(1) the prohibitions set out in paragraphs (1) through (6) of subsection (a) of this section; and

(2) the matters covered by section 4110 of this title.

* * * * * * *

§ 4110. Disciplinary boards

[(a) The Chief Medical Director, under regulations prescribed by the Administrator shall from time to time appoint boards to be known as disciplinary boards, each such board to consist of not less than three nor more than five employees, senior in grade, of the Department of Medicine and Surgery, to determine, upon notice and fair hearing, charges of inaptitude, inefficiency, or misconduct of any person employed in a position in paragraph (1) of section 4104 of this title. The majority of employees on a disciplinary board shall be employed in the same category of position as the employee who is the subject of the charges.]

(a)(1) The Chief Medical Director, under regulations prescribed by the Secretary, shall from time to time appoint disciplinary boards to determine, upon notice and fair hearing, the charges in any discipli-

nary action brought against a person employed in a position listed in paragraph (1) of section 4104 of this title (hereafter in this section referred to as the "respondent") on the basis of the performance or conduct of the respondent during employment with the Department of Veterans Affairs.

(2) A disciplinary board appointed in the case of any respondent shall consist of not less than three nor more than five employees of the Veterans Health Services and Research Administration who are senior in grade to the respondent. The majority of the members of such board shall be employed in the same category of position as the respondent.

(3) The Chief Medical Director may delegate the performance of the function of appointing a disciplinary board to an employee of the Veterans Health Services and Research Administration who is not involved in deciding whether to file charges to be determined by the board and who is not subordinate to any official involved in making such decision.

(b) The [Administrator] *Secretary* shall appoint the chairman and secretary of the board, each of whom shall have authority to administer oaths.

* * * * * * *

(d) A disciplinary board, when in its judgment charges are sustained, shall recommend to the [Administrator suitable disciplinary action, within limitations prescribed by the Administrator, which shall include reprimand, suspension without pay, reduction in grade, and discharge from the Department of Medicine and Surgery of such person.] *Secretary that the proposed disciplinary action be sustained or modified within limitations prescribed by the Secretary.* The [Administrator] *Secretary* shall either approve the recommendation of the board, approve such recommendation with modification or exception, approve such recommendation and suspend further action at the time, or disapprove such recommendation. The [Administrator] *Secretary* shall cause to be executed such action as the [Administrator] *Secretary* approves. The decision of the [Administrator] *Secretary* shall be final.

(e) The [Administrator,] *Secretary,* within such limitations as the [Administrator] *Secretary* may prescribe may delegate to the Chief Medical Director the authority vested in the [Administrator] *Secretary,* by subsections (b) and (d) of this section to (1) appoint the chairman and secretary of a disciplinary board, such official to have the power prescribed by this section, and (2) receive and act upon the recommendations of such a board. Any person against whom disciplinary action is taken under authority delegated pursuant to this subsection shall have the right to appeal such action to the [Administrator,] *Secretary,* but in the absence of such an appeal the decision of the Chief Medical Director shall have the same force and effect as a decision of the [Administrator.] *Secretary.*

(f)(1) A disciplinary board is not required in the case of a disciplinary action if the proposed action is suspension for 14 days or less, reassignment without a reduction in basic pay, reduction in rank without a reduction in basic pay, reprimand, or admonishment.

(2) An employee against whom a disciplinary action describe in paragraph (1) of this subsection is proposed to be taken shall be entitled to—

(A) an advance written notice stating the specific reasons for the proposed action;

(B) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(C) representation by an attorney or other spokesperson; and

(D) a written decision and the specific reasons for the decision at the earliest practicable date.

(3) Disciplinary actions described in paragraph (1) of this subsection shall be subject to review under either the provisions of section 4110A of this title (in the case of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5) or an agency review procedure to be established by the Secretary (in the case of such employees who are not members of such a unit). Any such agency review procedure established by the Secretary shall include—

(A) an informal review of the decision on the disciplinary action by an official of a higher level than the official who made the decision;

(B) a prompt decision by such higher level official and a right to formal review by an impartial examiner within the Department of Veterans Affairs;

(C) a prompt return of the findings and recommendations by the impartial examiner; and

(D) a prompt review of the examiner's findings and recommendations, together with any comments by the employee and the Department on such findings and recommendations, by an official of a higher level than the official who conducted the review pursuant to clause (A) of this paragraph.

§ 4110A. Grievances and certain disciplinary reviews

(a)(1) The Secretary shall authorize review of Department of Veterans Affairs actions on the following matters under procedures established by collective bargaining in accordance with the provisions of chapter 71 of title 5:

(A) Grievances of employees appointed under authority of this title who are members of a unit determined appropriate under section 7112 of title 5.

(B) Subject to paragraph (2) of this subsection, disciplinary actions described in subsection 4110(f)(1) of this title involving such employees.

(2) In the case of a review of a disciplinary action involving any question of clinical competence, as determined by either party, any person selected to serve as an arbitrator in such case under procedures established as provided in paragraph (1) of this subsection must be qualified as an arbitrator and must also be (A) qualified as a physician, dentist, or nurse, or (B) otherwise qualified, by specialized experience or training or both, in examining and adjudicating health-care issues.

(b) For the purpose of resolving grievances of supervisors and employees appointed under authority of this chapter who are not mem-

bers of a unit determined appropriate under section 7112 of title 5, the Secretary shall authorize review of action of the Department on such grievances pursuant to a Department review procedure established by the Secretary under section 4110(f)(3) of this title.

* * * * * * *

§ 4113. Travel expenses of [employees] *certain employees; continuing professional education of physicians and dentists*

(a) The Administrator may pay the expenses, except membership fees, of persons described in section 4103, section 4104(1), and physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries appointed on a temporary full-time or part-time basis under section 4114 of this title detailed by the Chief Medical Director to attend meetings of associations for the promotion of medical and related science.

(b) The Chief Medical Director shall reimburse any full-time board-certified physician or dentist appointed under section 4104(1) of this title, and may reimburse any other physician or dentist serving in the Veterans Health Services and Research Administration, for expenses incurred for continuing professional education activities approved under criteria prescribed by the Chief Medical Director. The maximum amount of the reimbursement may not exceed $1,000 per year, except as otherwise determined by the Chief Medical Director.

§ 4114. Temporary full-time, part-time, and without compensation appointments; residencies or internships

(a)(1) * * *

* * * * * * *

(3)(A) Temporary full-time appointments of physicians, dentists, podiatrists, optometrists, nurses, physician assistants, and expanded-function dental auxiliaries may exceed ninety days only if the Chief Medical Director finds that circumstances render it impracticable to obtain the necessary services through appointments under paragrah (1) of section 4104 of this title. Temporary full-time appointments of persons who have successfully completed a full course of nursing in a recognized school of [nursing,] *nursing* approved by the [Administrator,] *Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized education or training institution approved by the Secrtary* and *who* are pending registration [as a graduate nurse] *or licensure* in a State, *or certification by a national board recognized by the Secretary,* shall not exceed two years. Temporary full-time appointments of other personnel shall not exceed one year except as authorized in subparagraph (D) of this paragraph.

* * * * * * *

(C) A student [nurse] who has a temporary appointment under this paragraph and who is pursuing a full course of nursing in a recognized school of nursing approved by the [Administrator] *Secretary or a full course of training for any category of personnel described in paragraph (3) of section 4104 of this title in a recognized* *education or training institution approved by the Secretary* may be reappointed for [one year. Other personnel whose appointments are limited by this section to one year may not be reappointed under this subsection.] *a period not to exceed the duration of such student's academic program.*

* * * * * * *

[§ 4118. Special pay for physicians and dentists

[(a)(1) Notwithstanding the provisions of section 4107(d) or any other provision of law, in order to recruit and retain highly qualified physicians and dentists in the Department of Medicine and Surgery, the Administrator, pursuant to the provisions of this section and regulations which the Administrator shall prescribe to carry out this section, shall provide, in addition to any pay or allowance to which such physician or dentist is entitled, special pay in an amount that (except as provided under subsection (d) of this section) is not more than (A) $22,500 per annum to any physician employed in the Department of Medicine and Surgery on a full-time basis (or in the case of a physician employed on a part-time basis, a proportional amount of the maximum amount that would be paid under this section to such physician if such physician were employed on a full-time basis, calculated on the basis of the proportion which the part-time employment of such physician in the Department of Medicine and Surgery bears to full-time employment), or (B) $10,000 per annum to any dentist so employed on a full-time basis (or in the case of a dentist employed on a part-time basis, a proportional amount of the maximum amount that would be paid under this section to such dentist if such dentist were employed on a full-time basis, calculated on the basis of the proportion which the part-time employment of such dentist in the Department of Medicine and Surgery bears to full-time employment), except as provided in paragraphs (2) and (3) of this subsection, upon the execution, and for the duration, of a written agreement by such physician or dentist to complete a specified period of service in the Department.

[(2) Special pay may not be paid under this section to any physician or dentist who—

[(A) is employed on less than a half-time or intermittent basis,

[(B) occupies an internship or residency training position, or

[(C) is a reemployed annuitant.

[(3) The Chief Medical Director, in accordance with such regulations, may determine categories of positions applicable to both physicians and dentists in the Department of Medicine and Surgery as to which there is no significant recruitment and retention problem. Physicians and dentists serving in such positions shall not be eligible for special pay under this section. Not later than one year after making any such recruitment and retention determination and each year thereafter, the Chief Medical Director shall make a redetermination in accordance with such regulations.

[(b) The Administrator shall exercise the authority contained in this section to provide—

[(1) the maximum amount of such special pay to the Chief Medical Director and Deputy Chief Medical Director;

[(2) primary special pay of $7,000 to any eligible full-time physician, or $2,500 to any eligible full-time dentist, appointed under this chapter; and

[(3) a proportional amount of primary special pay of $7,000 to any eligible part-time physician, or of $2,500 to any eligible part-time dentist, appointed under this chapter, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician or dentist bears to full-time employment.

[(c)(1) In the case of eligible full-time physicians appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(2) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $15,500 to any eligible physician. In prescribeing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time physician eligible therefor:

[(A)(i) For full-time status, $6,000.

[(ii) For tenure of service within the Department of Medicine and Surgery—

[(I) of two years but less than five years, $1,000;

[(II) of five years but less than eight years, $2,000; and

[(III) of eight years or more, $3,000.

[(iii) For service in a medical specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $4,000 nor more than $15,500.

[(B) For service—

[(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director, $9,900;

[(ii) as a Chief of Staff or in an Executive Grade, $12,600;

[(iii) as Deputy Service Director or in a Director Grade, $13,000;

[(iv) as a Service Director, $13,500;

[(v) as a Deputy Assistant Chief Medical Director, $14,440; or

[(vi) as an Associate Deputy Chief Medical Director or Assistant Chief Medical Director, $15,300.

[(C) For—

[(i) specialty or first board certification, $2,000; or

[(ii) subspecialty or secondary board certification, $2,500.

[(D) For service (i) in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in the specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $2,000 nor more than $5,000.

[(2) In the case of eligible full-time dentists appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(2) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $7,500 to any eligible dentist. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than the following per annum amounts of incentive special pay to any full-time dentist eligible therefor:

[(A)(i) For full-time status, $1,000.

[(ii) For tenure of service within the Department of Medicine and Surgery—

[(I) of two years but less than seven years, $500; and

[(II) of seven years or more, $1,000.

[(iii) For service in a dental specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $2,000 nor more than $7,500.

[(B) For service—

[(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $2,750;

[(ii) as a Chief of Staff or in an Executive Grade, $3,500;

[(iii) as a Deputy Service Director or in a Director Grade, $3,625;

[(iv) as a Service Director, $3,750;

[(v) as a Deputy Assistant Chief Medical Director, $4,000, or

[(vi) as an Assistant Chief Medical Director, $4,250.

[(C) For service in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in the specific category of dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,750 not more than $2,500.

[(3) In the case of eligible part-time physicians appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(3) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $15,500 to any eligible physician. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than a proportional amount of the following per annum amounts of incentive special pay to any part-time physician eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such physician bears to full-time employment:

[(A)(i) For tenure of service within the Department of Medicine and Surgery—

[(I) of more than two years but less than five years, $750;

[(II) of five years but less than eight years, $1,500; and

[(III) of eight years or more, $2,250.

[(ii) For service in a medical specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $3,000 nor more than $12,375.

[(B) For service—

[(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $7,220; or

[(ii) as a Chief of Staff or in an Executive Grade, $9,190.

[(C) For—

[(i) specialty or first board certification, $1,500; or

[(ii) subspecialty or secondary board certification, $1,875.

[(D) For service (i) in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified physicians in the specific category of physicians, or (ii) in the Central Office of the Department of Medicine and Surgery, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,500 nor more than $4,000.

[(4) In the case of eligible part-time dentists appointed under this chapter, the Administrator shall provide, in addition to the primary special pay provided for in subsection (b)(3) of this section and in accordance with regulations prescribed to carry out this section, incentive special pay of not more than $7,500 to any eligible dentist. In prescribing such regulations to carry out this paragraph, the Administrator shall take into account only the following factors and may pay no more than a proportional amount of the following per annum amounts of incentive special pay to any dentist eligible therefor, which proportional amount shall be calculated on the basis of the proportion which the part-time employment in the Department of Medicine and Surgery of such dentist bears to full-time employment:

[(A)(i) For tenure of service within the Department of Medicine and Surgery—

[(I) of more than two years but less than seven years, $500; and

[(II) of seven years or more, $1,000.

[(ii) For service in a dental specialty with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,500 nor more than $5,625.

[(B) For service—

[(i) as a Service Chief (or in a comparable position as determined by the Chief Medical Director), $2,750; or

[(ii) as a Chief of Staff or in an Executive Grade, $3,500.

[(C) For service in a specific geographic location with respect to which the Chief Medical Director has determined, pursuant to such regulations, that there are extraordinary difficulties in the recruitment or retention of qualified dentists in a specific category of dentists, an amount (to be determined by the Chief Medical Director pursuant to such regulations) of not less than $1,310 nor more than $1,875.

[(5)(A) Except as provided in subparagraph (B) of this paragraph, a physician or dentist may not be provided incentive special pay under both clauses (A) and (B) of paragraph (1), (2), (3), or (4) (whichever is applicable) of this subsection.

[(B)(i) A physician or dentist serving as a Service Chief (or in a comparable position as determined by the Chief Medical Director) on a full-time basis may be provided incentive special pay under subclauses (i) and (iii) of clause (A) as well as under clause (B) of paragraph (1) or (2) (whichever is applicable) of this subsection.

[(ii) A physician or dentist serving as a Chief of Staff on a full-time basis may be provided incentive special pay under clause (A)(i) as well as under clause (B) of paragraph (1) or (2) (whichever is applicable) of this subsection.

[(d) In determining—

[(1) the total amount of special pay provided under this section to any physician or dentist for the purpose of determining the applicability to the special pay of such physician or dentist of the limitation specified in subsection (a) of this section on the total amount of such special pay; and

[(2) the total amount of incentive special pay provided under subsection (c) of this section to any physician or dentist for the purpose of determining the applicability to the incentive special pay of such physician or dentist of the limitation specified in such subsection on the total amount of such incentive special pay,

there shall be excluded any special pay provided to such physician or dentist under subsection (c)(1)(D), (c)(2)(C), (c)(3)(D), or (c)(4)(C) of this section for service in certain geographic locations.

[(e)(1) Any agreement entered into by a physician or dentist under this section shall be with respect to a period of one year of service in the Department of Medicine and Surgery unless the physician or dentist requests an agreement for a longer period of service not to exceed four years. Any physician or dentist who entered into an agreement under this section and has not failed to refund any amount which such physician or dentist became obligated to refund under any such agreement shall be eligible to enter into a subsequent agreement under this section.

[(2)(A) Any such agreement shall provide that the physician or dentist, in the event that such physician or dentist voluntarily, or because of misconduct, fails to complete at least one year of service, or such lesser period of service as provided for in the final sentence of paragraph (1) of this subsection, pursuant to such agreement, shall be required to refund the total amount received under this section, unless the Chief Medical Director determines, in accordance with regulations prescribed under subsection (a) of this section, that such failure is necessitated by circumstances beyond the control of the physician or dentist.

[(B) Any such agreement shall specify the terms under which the Veterans' Administration and the physician or dentist may elect to terminate such agreement.

[(3) Any amount of special pay payable under this section shall be paid in biweekly installments.

[(4)(A) Any physician or dentist who is employed in the Department of Medicine and Surgery before October 13, 1975, and who enters into an agreement under this section during the forty-five-day period beginning on October 22, 1975, is entitled to special pay beginning on October 12, 1975.

[(B) Any physician or dentist who becomes employed in the Department of Medicine and Surgery after October 12, 1975, and who enters into an agreement under this section before the close of the forty-five-day period beginning on October 22, 1975, is entitled to special pay beginning on the date on which the physician or dentist becomes employed.

[(C) Any physician or dentist who becomes employed in the Department of Medicine and Surgery after the close of the forty-five-day period beginning on October 22, 1975, or who does not enter into any agreement under this section before the close of such 45-day period, and who thereafter enters into an agreement under this section, is entitled to special pay beginning on the date on which the agreement is entered into, or the date on which the physician or dentist becomes employed, whichever date is later.

[(f)(1) Except as provided in paragraph (2) of this subsection, any additional compensation provided as special pay under this section shall not be considered as basic pay for the purposes of subchapter VI and section 5595 of chapter 55, chapter 81, 83, or 84 of title 5, or other benefits related to basic pay.

[(2) Additional compensation paid as special pay under this section after September 30, 1980, to any full-time employee shall be included in basic pay for purposes of chapter 83 or 84 of title 5, as the case may be. Notwithstanding the preceding sentence, special pay paid to any full-time employee after September 30, 1980, shall be included in average pay, as defined in section 8331(4) or 8401(3) of such title (as applicable) only—

> [(A) for the purposes of computing benefits paid under section 8337, 8341 (d) or (e), 8442(b), 8443, or 8451 of such title; or
>
> [(B) if the employee has completed not less than 15 years of full-time service in the Department of Medicine and Surgery (except that, regardless of the length of such employee's service, no special pay may be included in average pay in computing an annuity that commences before October 1, 1985, and only one-half of any special pay paid after September 30, 1980, may be included in average pay in computing an annuity that commences on or after October 1, 1985, but before October 1, 1990).

[(3) Any additional compensation provided as special pay under this section shall be considered as annual pay for the purposes of chapter 87 of title 5, relating to life insurance for Federal employees.

[(g)(1) It is the policy of Congress to assure that the levels of total pay for Veterans' Administration physicians and dentists are fixed at levels reasonably comparable (A) with the levels of total pay of physicians and dentists employed by or serving in other departments and agencies of the Federal Government, and (B) with the income of non-Federal physicians and dentists, so as to make possible the recruitment and retention of a well-qualified employee work force of physicians and dentists capable of providing quality care for eligible veterans.

[(2) To assist the Congress and the President in carrying out the policy stated in paragraph (1) of this subsection, the Administrator shall—

[(A) define the bases for pay distinctions, if any, among various categories of physicians and dentists, including between physicians and dentists employed by the Veterans' Administration and physicians and dentists employed by other departments and agencies of the Federal Government and between all Federal sector and non-Federal sector physicians and dentists;

[(B) obtain measures of income from the employment or practice of physicians and dentists in the non-Veterans' Administration sector, including Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the amounts of special pay for Veterans' Administration physicians and dentists;

[(C) submit a report to the President, on such date as the President may designate but not later than December 31, 1988, and once every four years thereafter, recommending appropriate amounts of special pay to carry out the policy set forth in paragraph (1) of this subsection with respect to the pay of Veterans' Administration physicians and dentists; and

[(D) include in such recommendations, when considered appropriate and necessary by the Administrator, modifications of the special pay levels set forth in this section (i) whenever the Veterans' Administration is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists because the incomes of non-Veterans' Administration physicians and dentists performing comparable types of duties are significantly in excess of the levels of total pay (including basic pay and special pay) of Veterans' Administration physicians and dentists, or (ii) whenever other extraordinary circumstances are such that special pay levels are needed to recruit or retain a sufficient number of well-qualified physicians and dentists.

[(3) The President shall include in the Budget next transmitted to the Congress under section 1105 of title 31, after the submission of each report of the Administrator under paragraph (2)(C) of this subsection recommendations with respect to the exact rates of special pay for physicians and dentists under this section.

[(4) Not later than April 30 of each year, the Administrator shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding the implementation of this section. Each such report shall include—

[(A) a review of the implementation of this section (including the Administrator's and Chief Medical Director's actions, findings, recommendations, and other activities under this section) to date for the fiscal year during which the report is submitted and for such portion of the preceding fiscal year as was not included in the previous annual report; and

[(B) a plan in connection with the implementation of this section for the remainder of the fiscal year during which the report is submitted and for the succeeding fiscal year.

[(h) A physician or dentist serving a period of obligated service pursuant to subchapter IV of this chapter is not eligible for incentive special pay under this section during the first three years of such obligated service and may only be paid primary special pay under this section at the discretion of the Administrator upon the recommendation of the Chief Medical Director.]

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§ 4120. Recruitment and retention bonus pay for nurses and certain other health-care personnel

(a)(1) * * *

* * * * * * *

(f) The Administrator may enter into agreements under this section with individuals in a health profession other than nursing (and other than a health profession for which special pay may be provided under [section 4118 of this title)] *subchapter II of this chapter)* if the Administrator determines that there are significant problems with respect to recruitment and retention of employees in that health profession. The Administrator's authority to enter into any such agreement under this section, and such agreement, shall be subject to the provisions of this section in the same manner as are the authority to enter into an agreement under this section with a registered nurse and such an agreement.

* * * * * * *

§ 4120A. Performance awards and cash awards

(a)(1) The Secretary shall pay—

(A) performance awards under section 5406 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers; and

(B) cash awards under section 5407 of title 5 to Department employees described in section 4104(1) of this title who are supervisors or managers in grades GS-13 through GS-15 of the General Schedule.

(2) The Secretary may pay performance awards under section 5406 of title 5 to Department employees described in section 4104 of this title who are not supervisors or managers.

(b) In the application of section 5406(c)(1) of title 5 to the payment of performance awards under subsection (a), the reference to employees covered by the performance management and recognition system shall be deemed to refer to the employees who are covered by paragraph (1)(A) of such subsection and the employees whom the Secretary elects to cover pursuant to paragraph (2) of such subsection.

(c) The Secretary shall prescribe in regulations the criteria for making performance awards under subsections (a)(1)(A) and (b) of this section.

(d) Determinations of which employees are supervisors or managers shall be made in accordance with the regulations prescribed to carry out this section, except that for purposes of this section head nurses shall be considered supervisors.

(e) A cash award under this section shall not be considered as basic pay for the purposes of any provision of law referred to in section 4107(e)(9) of this section.

§ 4120B. Dependent care assistance

The Secretary shall establish and conduct a dependent care assistance program, which meets the requirements of section 129 of the Internal Revenue Code of 1986, for the care of dependents of employees in the Veterans Health Services and Research Administration.

SUBCHAPTER II—SPECIAL PAY FOR PHYSICIANS AND DENTISTS

§ 4121. Special pay: authority

(a)(1) In order to recruit and retain highly qualified physicians and dentists in the Veterans Health Services and Research Administration, the Secretary may pay special pay to physicians and dentists as provided in this subchapter. Special pay under this subchapter shall be paid under regulations prescribed by the Secretary after the Secretary has received the recommendations of the Chief Medical Director.

(2) The Secretary may delegate the authority to prescribe the regulations required under paragraph (1) only to the Chief Medical Director. The Chief Medical Director may not redelegate that authority.

(b) Special pay must be paid to a physician or dentist under this subchapter only pursuant to a written agreement entered into by the physician or dentist with the Department under section 4122 of this title.

(c) A physician or dentist serving a period of obligated service pursuant to chapter 76 of this title is not eligible for special pay under this subchapter during the first three years of that obligated service, except that, at the discretion of the Chief Medical Director, such a physician or dentist may be paid special pay for full-time status during all or any portion of those three years.

(d)(1) The Chief Medical Director may designate categories of positions of physicians and dentists in the Veterans Health Services and Research Administration with respect to which the Chief Medical Director determines there is no significant recruitment or retention problem. Physicians or dentists serving in a category of positions so designated shall not be eligible for special pay under this subchapter.

(2) The Chief Medical Director shall review each year each category of positions that has been designated as ineligible for special pay under this subchapter with a view to determining whether the category continues to present no significant recruitment or retention problem. The Chief Medical Director may withdraw the designation

made with respect to any category of positions if the Chief Medical Director determines, on the basis of the review, that such category represents a significant recruitment or retention problem. Upon the withdrawal of a designation with respect to a category of positions, physicians or dentists serving in that category become eligible for special pay under this subchapter. The specification of categories of positions for purposes of this subchapter shall be made in accordance with regulations prescribed under subsection (a) of this section.

§ 4122. Special pay: agreements

(a) A physician or dentist who enters into an agreement under this subchapter shall agree to serve in the Veterans Health Services and Research Administration for a period of one to four years in exchange for special pay for the period of the obligated service.

(b) A physician or dentist who voluntarily, or because of misconduct, fails to complete at least one year of obligated service pursuant to an agreement entered into under this subchapter shall be required to refund the total amount of special pay received under this subchapter unless the Chief Medical Director determines, in accordance with regulations prescribed under section 4121(a) of this title, that the failure was the result of circumstances beyond the control of the physician or dentist.

(c) A physician or dentist who entered into an agreement under this subchapter and has refunded the full amount, if any, which the physician or dentist became obligated to refund under the agreement shall be eligible to enter into a subsequent agreement under this section.

(d) Each agreement entered into under this subchapter shall specify the terms under which the Secretary and the physician or dentist may terminate the agreement.

§ 4123. Special pay: full-time physicians

Special pay under this subchapter for physicians employed on a full-time basis shall be based on the following special-pay factors and annual rates:

(1) For full-time status, the annual rate shall be $9,000.

(2)(A) For length of service as a physician within the Veterans Health Services and Research Administration, the annual rates shall be as follows:

Length of Service	*Rate*	
	Minimum	*Maximum*
2 years but less than 4 years	*$4,000*	*$6,000*
4 years but less than 8 years	*6,000*	*12,000*
8 years or more	*12,000*	*25,000*

(B) The Chief Medical Director shall specify a uniform national rate for each range of years of service established by or under this paragraph. The Chief Medical Director may, as to length of service in excess of eight years, establish uniform national rates for such ranges of years of service as the Chief Medical Director considers appropriate.

(3)(A) For service in a medical specialty with respect to which the Chief Medical Director has determined (on a nationwide or other geographic basis or, subject to section 4127(d)(2) of this title, on an individual-facility basis) that there are extraordinary difficulties in the recruitment or retention of qualified physicians, the annual rate shall be not less than $4,000 and not more than $40,000.

(B) For service by a physician who serves only a portion of a year in a position for which special pay is paid under subparagraph (A), the annual rate shall be calculated on the basis of the proportion of time served in the position for which the special pay is paid.

(4)(A) For service in an executive position or grade specified in the table below, the annual rate shall be within the range specified for that position or grade as follows:

Position or Grade	***Rate***	
	Minimum	***Maximum***
Chief of Staff or Executive Director Grade	*$14,500*	*$25,000*
Service Chief (or a comparable position as determined by the Chief Medical Director)	*4,500*	*15,000*

(B) For service in an executive position specified in the table below, the annual rate shall be rate specified for that position as follows:

Position	***Rate***
Chief Medical Director	*$45,000*
Deputy Chief Medical Director	*40,000*
Associate Deputy Chief Medical Director	*35,000*
Assistant Chief Medical Director (or a comparable position as determined by the Chief Medical Director)	*30,000*
Deputy Assistant Chief Medical Director	*27,500*
Service Director	*25,000*
Deputy Service Director	*22,500*

(C) For service by a physician who serves only a portion of a year in an executive position listed in subparagraph (B) of this paragraph or who serves a portion of a year in that position and also serves a portion of the same year in another position or grade for which special pay is provided under this section, the annual rate shall be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

(5) For specialty certification or first board certification, the annual rate shall be $2,000, and for subspecialty certification or secondary board certification, an additional $500.

(6) For service in a specific geographic location with respect to which the Chief Medical Director has determined that there are extraordinary difficulties in the recruitment or retention of qualified physicians generally, or in the recruitment or retention of a specific category of physicians, the annual rate shall be not less than $2,000 nor more than $15,000.

(7)(A) For service by an individual physician with exceptional qualifications within a specialty, the annual rate shall be not more than $15,000.

(B) Special pay under this paragraph may be paid only if personally approved by the Chief Medical Director on a case-by-case basis and only to the extent that the amount paid under this paragraph, when added to the total of the amounts paid to the physician under paragraphs (1) through (6) of this section, does not exceed the total amount that may be paid under those paragraphs to a physician with the same length of service, specialty, and position as the physician concerned.

§ 4124. Special pay: part-time physicians

(a) Subject to section 4127(e) of this title and subsection (b) of this section, special pay under this subchapter for physicians employed on a part-time basis shall be based on the special-pay factors and annual rates specified in section 4123 of this title.

(b) The annual rate of special pay paid to a physician employed on a part-time basis shall bear the same ratio to the annual rate that the physician would be paid under section 4123 (other than for full-time status) if the physician were employed on a full-time basis as the amount of part-time employment by the physician bears to full-time employment.

§ 4125. Special pay: full-time dentists

(a) Special pay under this subchapter for dentists employed on a full-time basis shall be based on the following special pay factors and annual rates:

(1) For full-time status, the annual rate shall be $3,500.

(2)(A) For length of service as a dentist within the Veterans Health Services and Research Administration, the annual rates shall be as follows:

Length of Service	*Minimum*	*Maximum*
2 years but less than 4 years	*$1,300*	*$2,000*
4 years but less than 8 years	*2,000*	*4,000*
8 years or more	*4,000*	*8,300*

(B) The Chief Medical Director shall specify a uniform national rate for each range of years of service established by or under this paragraph. The Chief Medical Director may, as to length of service in excess of eight years, establish uniform national rates for such ranges of years of service as the Chief Medical Director considers appropriate.

(3)(A) For service in a dental speciality with respect to which the Chief Medical Director has determined (on a nationwide or other geographic basis or, subject to section 4127(d)(2) of this title, on an individual facility basis) that there are extraordinary difficulties in the recruitment or retention of qualified dentists, the annual rate shall be not less than $2,000 nor more than $30,000.

(B) For service by a dentist who serves only a portion of a year in a position for which special pay is paid under subparagraph

(A), the annual rate shall be calculated on the basis of the proportion of time served in the position for which the special pay is paid.

(4)(A) For service in an executive position or grade specified in the table below, the annual rate shall be within the range specified for that position or grade as follows:

Position or Grade	*Rate*	
	Minimum	*Maximum*
Chief of Staff or Executive Director Grade	*$3,500*	*$8,000*
Service Chief (or a comparable position as determined by the Chief Medical Director)	*3,000*	*5,000*

(B) For service in an executive position specified in the table below, the annual rate shall be the rate specified for that position as follows:

Position	*Rate*
Assistant Chief Medical Director (or a comparable position as determined by the Chief Medical Director)	*$10,000*
Deputy Assistant Chief Medical Director	*10,000*
Service Director	*9,000*
Deputy Service Director	*8,000*

(C) For service by a dentist who serves only a portion of a year in an executive position listed in subparagraph (B) of this paragraph or who serves only a portion of a year in that position and also serves a portion of the same year in another position or grade for which special pay is provided under this section, the annual rate shall be calculated on the basis of the proportion of time served in the position or positions for which special pay is provided.

(5) For specialty certification or first board certification, the annual rate shall be $2,000, and for subspecialty certification or secondary board certification, an additional $500.

(6) For service in a specific geographic location with respect to which the Chief Medical Director has determined there are extraordinary difficulties in the recruitment or retention of qualified dentists generally, or in the recruitment or retention of a specific category of dentists, the annual rate shall be not less than $1,750 nor more than $5,000.

(7)(A) For service by an individual dentist with exceptional qualifications within a specialty, the annual rate shall be not more than $5,000.

(B) Special pay under this paragraph may be paid only if personally approved by the Chief Medical Director on a case-by-case basis and only to the extent that the amount paid under this paragraph, when added to the total of the rates paid to the dentist, under paragraphs (1) through (6) of this section, does not exceed the total of the rates that may be paid under those paragraphs to a dentist with the same length of service, specialty, and position as the dentist concerned.

§ 4126. Special pay: part-time dentists

(a) Subject to section 4127(e) of this title and subsection (b) of this section, special pay under this subchapter for dentists employed on a part-time basis shall be based on the special-pay factors and annual rates specified in section 4125 of this title.

(b) The annual rate of special pay paid to a dentist employed on a part-time basis shall bear the same ratio to the annual rate that the dentist would be paid under section 4125 of this title (other than for full-time status) if the dentist were employed on a full-time basis as the amount of part-time employment by the dentist bears to full-time employment.

§ 4127. Special pay: general provisions

(a)(1)(A) Except as provided in subparagraph (B) of this paragraph—

(i) a physician may not be paid special pay under paragraph (3) of section 4123 of this title for any period for which the physician is paid special pay for service in an executive position under paragraph (4)(B) of that section; and

(ii) a dentist may not be paid special pay under paragraph (3) of section 4125 of this title for any period for which the dentist is paid special pay for service in an executive position under paragraph (4)(B) of that section.

(B) A physician may be paid special pay under paragraph (3) of section 4123 of this title and a dentist may be paid special pay under paragraph (3) of section 4125 of this title if the Chief Medical Director determines that the specialty skills of the physician or dentist for which the special pay is provided are necessary in order for the physician or dentist to carry out effectively the executive position in which the physician or dentist serves.

(2) Scarce specialty pay may be paid under section 4123(3), 4124(b), 4125(3), or 4126(b) of this title to a physician or dentist serving as a Chief of Staff only if the Chief Medical Director (A) determines that such pay is necessary for the purpose of recruitment and retention of highly qualified physicians or dentists to serve as Chiefs of Staff in the Veterans Health Services and Research Administration, and (B) personally approves the payment of such pay in the case of such physician or dentist.

(b) The following determinations shall be made pursuant to regulations prescribed under section 4121(a) of this title:

(1) A determination that there are extraordinary difficulties (on a nationwide or other geographic basis or on an individual facility basis) in the recruitment or retention of qualified physicians in a medical specialty or in the recruitment or retention of qualified dentists in a dental specialty.

(2) A determination of whether there are extraordinary difficulties in the recruitment or retention of qualified physicians generally, or in the recruitment or retention of a specific category of physicians in a specific geographic location or in the recruitment or retention of qualified dentists generally, or in the recruitment or retention of a specific category of dentists, in a specific geographic location.

(c)(1) A determination for the purposes of this subchapter that there are extraordinary difficulties in the recruitment or retention of qualified physicians in a medical specialty, or in the recruitment or retention of qualified dentists in a dental specialty, with regard to the needs of an individual medical facility may be made only upon the request of the director of that facility.

(2)(A) If the director of a Department of Veterans Affairs medical facility determines that the facility is unable to recruit or retain physicians or dentists in a specific category for that facility under paragraphs (3) and (6) of section 4123, section 4124(b), paragraphs (3) and (6) of section 4125, or section 4126(b) of this title, the director shall notify the Chief Medical Director and recommend the payment of special pay or an increase in the payment of special pay, as appropriate, for that category of physicians or dentists.

(B) The special pay (or the increase in special pay) recommended by the director shall become effective with respect to that facility 45 days after the date on which the Chief Medical Director receives the notification of the director unless, before the expiration of the 45 days, the Chief Medical Director disapproves the recommendation of the director. The recommended special pay may become effective before the expiration of the 45 days, at the discretion of the director of the facility, if the Chief Medical Director approves the recommendation before the expiration of the 45 days.

(C) The approval or disapproval under this subsection of the recommendation of a director of a facility may be delegated or redelegated to any officer or employee of the Veterans Health Services and Research Administration who holds a position in the direct line of authority between the Chief Medical Director and the director of the facility higher than the one held by the director making the recommendation, as determined by the Chief Medical Director.

(d)(1) Except as provided in paragraph (2) of this subsection, if special pay under paragraph (3) of section 4123 of this title is paid of physicians or dentists on a nationwide, other geographic, or individual-facility basis, all physicians or dentists, as the case may be, with the same specialty serving in the georgraphic area or facility concerned shall be paid the same rate of such pay.

(2) Special pay for service in a specialty may be paid to a physician or dentist under section 4123(3), 4124(b), 4125(3), or 4126(b) of this title (as the case may be) on an individual-facility basis only if—

> *(A) the maximum amount of special pay permitted under the section 4123(6), 4124(b), 4125(6) or 4126(b) of this title for service in a specific geographic location is being paid physicians or dentists, as the case may be, at the facility concerned, and*
>
> *(B) the Chief Medical Director, upon the request of the facility director determines that such maximum amount is insufficient to meet the needs of that facility for qualified physicians or dentists in that specific category of physicians or dentists, as the case may be. If special pay under this paragraph is paid to a physician or dentist on an individual-facility basis, all physicians or dentists, as the case may be, with the same specialty serving at the facility concerned shall be paid the same rate of such pay.*

(e)(1) Except as provided in paragraph (2) of this subsection, special pay may not be paid under this section to a physician or dentist who—

(A) is employed on less than a half-time basis or on an intermittent basis;

(B) occupies an internship or residency training position; or

(C) is a reemployed annuitant.

(2) If the Chief Medical Director determines that payment of special pay to a physician or dentist who is employed on a less than half-time basis is the most cost-effective way available for providing needed medical or dental specialist services at a Department facility, the Chief Medical Director may authorize the payment of special pay for factors other than for full-time status to that physician or dentist at a rate computed on the basis of the proportion that the part-time employment of the physician or dentist bears to full-time employment.

(f)(1) A physician or dentist who—

(A) is employed on a full-time basis in the Veterans Health Services and Research Administration,

(B) was employed as a physician or dentist on a full-time basis in the Veterans Health Services and Research Administration on the day before the effective date of this subchapter, and

(C) was being paid only for the special-pay factors of primary, full-time, and tenure of service,

shall be paid special pay under this subchapter at a rate not less than the rate of special pay the physician or dentist was paid under section 4118 of this title or the day before such effective date.

(2) A physician or dentist who—

(A) is employed on a part-time basis in the Veterans Health Services and Research Administration,

(B) was employed as a physician or dentist on a part-time basis in the Veterans Health Services and Research Administration on the day before the effective date of this subchapter, and

(C) was being paid only for the special-pay factors of primary and tenure of service,

shall be paid special pay under this subchapter at a rate not less than the rate of special pay the physician or dentist was paid under section 4118 of this title on the day before such effective date.

(g) Special pay under this subchapter shall be paid in equal installments in accordance with regularly established pay periods.

(h) In no case may the total amount of compensation paid to a physician or dentist under this title in any year exceed the amount of annual compensation (excluding expenses) specified in section 102 of title 3.

§ 4128. Special pay: coordination with other benefit laws

(a) Special pay under this subchapter shall be in addition to any other pay or allowances to which a physician or dentist is entitled.

(b)(1) A physician or dentist who has no section 4118 service and has completed not less than 15 years of service as a physician or dentist in the Veterans Health Services and Research Administration shall be entitled to have special pay paid to the physician or

dentist under this subchapter considered basic pay for the purposes of chapter 83 or 84 of title 5, as appropriate.

(2) A physician or dentist who has section 4118 service and has completed a total of not less than 15 years of service as a physician or dentist in the Department of Medicine and Surgery of the Department of Veterans Affairs (or its predecessor) and the Veterans Health Services and Research Administration shall be entitled to have special pay paid to the physician or dentist under this subchapter considered basic pay for the purposes of chapter 83 or 84, as appropriate, of title 5 as follows:

(A) In an amount equal to the amount that would have been so considered under section 4118 of this title on the day before the effective date of this section based on the rates of special pay the physician or dentist was entitled to receive under that section on the day before such effective date.

(B) With respect to any amount of special pay received under this subchapter in excess of the amount such physician or dentist was entitled to receive under section 4118 of this title on the day before the effective date of this section, in an amount equal to 20 percent of such excess amount for each two years that the physician or dentist has completed as a physician or dentist in the Veterans Health Services and Research Administration after the effective date of this section.

(3) All special pay paid under this subchapter shall be included in average pay (as defined in sections 8331(4) or 8401(3) of title 5, as appropriate) for purposes of computing benefits paid under section 8337, 8341 (d) or (e), 8443, or 8351 of such title.

(4) Special pay paid under section 4118 of this title, as in effect before the effective date of this section, to a physician or dentist who has section 4118 service shall be credited to the physician or dentist for the same purposes and in the same manner and to the same extent that such special pay was credited to the physician or dentist before such effective date.

(5) For purposes of this subsection:

(A) The term "physician or dentist who has no section 4118 service" means a physician or dentist employed as a physician or dentist in the Veterans Health Services and Research Administration who has no previous service as a physician or dentist in the Department of Medicine and Surgery of the Department of Veterans Affairs (or its predecessor) before the effective date of this section.

(B) The term "physician or dentist who has section 4118 service" means a physician or dentist employed as a physician or dentist in the Veterans Health Services and Research Administration who has previous service as a physician or dentist in the Department of Medicine and Surgery of the Department of Veterans Affairs (or its predecessor) or in the Veterans Health Services and Research Administration before the effective date of this section.

§ 4129. Periodic review of pay of physicians and dentists; quadrennial report

(a) In order to make possible the recruitment and retention of a well-qualified work force of physicians and dentists capable of pro-

viding a high quality of care for eligible veterans, it is the policy of Congress to ensure that the levels of total pay for physicians and dentists of the Veterans Health Services and Research Administration are set at levels reasonably comparable—

(1) with levels of total pay of physicians and dentists employed by or serving in other departments and agencies of the Federal Government; and

(2) with the incomes received by non-Federal sector physicians and dentists for the performance of services as physicians or dentists.

(b)(1) To assist Congress and the President in carrying out the policy stated in subsection (a) of this section, the Secretary shall—

(A) define the bases for pay distinctions, if any, among various categories of physicians and dentists, including distinctions between physicians and dentists employed by the Veterans Health Services and Research Administration and physicians and dentists employed by other departments and agencies of the Federal Government and between all Federal sector and non-Federal sector physicians and dentists; and

(B) obtain measures of income from the employment or practice of physicians and dentists outside the Department, including both the Federal and non-Federal sectors, for use as guidelines for setting and periodically adjusting the rates of special pay for Department physicians and dentists.

(2) The Secretary shall submit to the President a report, on such date as the President may designate but not later than December 31, 1992, and once every four years thereafter, recommending appropriate rates of special pay to carry out the policy set forth in subsection (a) of this section with respect to the pay of physicians and dentists of the Veterans Health Services and Research Administration. The Secretary shall include in such report, when considered appropriate and necessary by the Secretary, recommendations for modifications of the special pay levels set forth in this subchapter whenever—

(A) such Administration is unable to recruit or retain a sufficient work force of well-qualified physicians and dentists because the total income and other employment benefits received by physicians and dentists for the performance of services as physicians and dentists outside such Administration who perform comparable types of duties is significantly in excess of the levels of total compensation (including basic pay, special pay, and other employment benefits) of physicians and dentists of such Administration; or

(B) other extraordinary circumstances are such that special pay levels need to be modified in order to recruit and retain a sufficient number of well-qualified physicians and dentists.

(c) The President shall specify in the budget next transmitted to the Congress under section 1105 of title 31 after the submission of each report of the Secretary under subsection (b)(2) of this section the exact rates of special pay recommended for physicians and dentists under this subchapter and the cost of those rates compared with the cost of the special-pay rates in effect under this subchapter at the time the budget is transmitted.

§ 4130. Annual report

The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives an annual report on the use of the special pay authority provided in this subchapter. The Secretary shall submit the report each year as part of the budget justification documents submitted in support of the budget submitted for that year pursuant to section 1105 of title 31. Each such report shall include the following:

(1) A review of the use of the authorities provided in this subchapter (including the Secretary's and Chief Medical Director's actions, findings, recommendations, and other activities under this subchapter) during the fiscal year preceding the fiscal year in which the report is submitted and for so much of the current fiscal year as may be practicable.

(2) The Department's plans for the use of the authorities provided in this subchapter for the current and next fiscal years.

(3) A description of the amounts of special pay paid in each category of special pay during the preceding fiscal year, shown by category of pay.

(4) A list of the geographic areas and the scarce medical and dental specialties for which special pay was paid during the preceding fiscal year, a list of the geographic areas and scarce specialities for which special pay is being paid during the current fiscal year, and a list of the geographic areas and scarce specialities for which special pay is expected to be paid during the next fiscal year, together with a summary of any differences among the three lists.

(5) The number of physicians and dentists—

(A) who left employment with the Veterans Health Services and Research Administration during the preceding fiscal year,

(B) who changed from full-time status to part-time status during the preceding fiscal year, and

(C) who changed from part-time status to full-time status during the preceding fiscal year,

and a summary of the reasons for such actions.

(6) The number of positions, by specialty, created and the number of positions, by specialty, abolished during the preceding fiscal year, and a summary of the reasons for such actions.

(7) The number of unfilled physician and dentist positions in each specialty in the Veterans Health Service and Research Administration, the average and maximum lengths of time that such positions have been unfilled, and a summary of the reasons that such positions remain unfilled and, in the case of any specialty not designated as a scarce specialty for purposes of special pay under this subchapter, an explanation (including comparisons with other specialties that have been so designated) of why the specialty has not been so designated.

(8) An assessment of the need for periodically adjusting the rates of special pay of physicians and dentists of the Veterans Health Services and Research Administration to reflect cost-of-living increases as a means of recruiting and retaining high quality medical personnel.

SUBCHAPTER [II] *III*—REGIONAL MEDICAL EDUCATION CENTERS

[§ 4121.] *§ 4131.* Designation of Regional Medical Education Centers

(a) In carrying out the [Administrator's] *Secretary's* functions under section 4101 of this title with regard to the training of health manpower, the [Administrator] *Secretary* shall implement a program under which the [Administrator] *Secretary* shall designate as Regional Medical Education Centers such [Veterans' Administration] *Department* hospitals as the [Administrator] *Secretary* determines appropriate to carry out the provisions of this subchapter.

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[§ 4122.] *§ 4132.* Supervision and staffing of Centers

(a) * * *

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(b) As a means of providing appropriate recognition to persons in the career service of the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* who possess outstanding qualifications in a particular medical or health care discipline, the Chief Medical Director shall from time to time and for such period as the Chief Medical Director deems appropriate assign such persons to serve as visiting instructors at Centers.

(c) Whenever the Chief Medical Director deems it necessary for the effective conduct of the program provided for under this subchapter, the Chief Medical Director is authorized to contract of the services of highly qualified medical and health personnel from outside the [Veterans' Administration] *Department* to serve as instructors at such Centers.

[§ 4123.] *§ 4133.* Personnel eligible for training

(a) The Chief Medical Director shall determine the manner in which personnel are to be selected for training in the Centers. Preference shall be given to career personnel of the [Department of Medicine and Surgery.] *Veterans Health Services and Research Administration.*

(b) To the extent that facilities are available, medical and health personnel from outside the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* may, on a reimbursable basis, be provided training in the Centers. Such reimbursement may include reciprocal training of personnel of the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* provided under sharing arrangements entered into by the Chief Medical Director and the heads of the entities providing such reciprocal training. Any amounts received by the United States as reimbursement under this subsection shall be credited to the applicable [Veterans Administration] *Department* medical appropriation account.

[§ 4124.] *§ 4134.* Consultation

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SUBCHAPTER [III] *IV*—PROTECTION OF PATIENT RIGHTS

[§ 4131.] *§ 4141.* Informed consent

The [Administrator,] *Secretary,* upon the recommendation of the Chief Medical Director and pursuant to the provisions of section [4134] *4144* of this title, shall prescribe regulations establishing procedures to ensure that all medical and prosthetic research carried out and, to the maximum extent practicable, all patient care furnished under this title shall be carried out only with the full and informed consent of the patient or subject or, in appropriate cases, a representative thereof.

[§ 4132.] *§ 4142.* Confidentiality of certain medical records

(a)(1) Records of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus or sickle cell anemia which is carried out by or for the [Veterans' Administration] *Department* under this title shall, except as provided in subsections (e) and (f) of this section, be confidential, and (section 3301 of this title to the contrary notwithstanding) such records may be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

* * * * * * *

(b)(1) The content of any record referred to in subsection (a) of this section may be disclosed by the [Administrator] *Secretary* in accordance with the prior written consent of the patient or subject with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed by the [Administrator.] *Secretary.*

(2) Whether or not any patient or subject, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed by the [Administrator] *Secretary* as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient or subject in any report of such research, audit, or evaluation, or otherwise disclose patient or subject identities in any manner.

(C)(i) In the case of any record which is maintained in connection with the performance of any program or activity relating to infection with the human immunodeficiency virus, to a Federal, State, or local public-health authority, charged under Federal or State law with the protection of the public health, and to which Federal or State law requires disclosure of such record, if a qualified representative of such authority has made a written request that such record be provided as required pursuant to such law for a purpose authorized by such law.

(ii) A person to whom a record is disclosed under this paragraph may not redisclose or use such record for a purpose other than that for which the disclosure was made.

(D) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient or subject, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(3) In the event that the patient or subject who is the subject of any record referred to in subsection (a) of this section is deceased, the content of any such record may be disclosed by the [Administrator] *Secretary* only upon the prior written request of the next of kin, executor, administrator, or other personal representative of such patient or subject and only if the [Administrator] *Secretary* determines that such disclosure is necessary for such survivor to obtain benefits to which such survivor may be entitled, including the pursuit of legal action, but then only to the extent, under such circumstances, and for such purposes as may be allowed in regulations prescribed pursuant to section [4134] *4144* of this title.

* * * * * * *

(e) The prohibitions of this section shall not prevent any interchange of records—

(1) within and among those components of the [Veterans' Administration] *Department* furnishing health care to veterans, or determining eligibility for benefits under this title; or

(2) between such components furnishing health care to veterans and the Armed Forces.

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[§ 4133.] *§ 4143.* Nondiscrimination against alcohol and drug abusers and persons infected with the human immunodeficiency virus

(a) Veterans eligible for treatment under chapter 17 of this title who are alcohol or drug abusers or who are infected with the human immunodeficiency virus shall not be discriminated against in admission or treatment by any [Veterans' Administration] *Department* health-care facility solely because of their alcohol or drug abuse or dependency or because of their viral infection.

(b) The [Administrator] *Secretary* shall prescribe regulations for the enforcement of this section. Such regulations, with respect to the admission and treatment of such veterans who are alcohol or drug abusers, shall be prescribed in accordance with section [4134] *4144* of this title.

[§ 4134.] ***§ 4144.*** **Regulations**

(a) Regulations prescribed by the [Administrator] *Secretary* under section [4131] *4141* of this title, section [4132] *4142* of this title with respect to the confidentiality of alcohol and drug abuse medical records, and section [4133] *4143* of this title with respect to alcohol or drug abusers shall, to the maximum extent feasible consistent with other provisions of this title, make applicable the regulations described in subsection (b) of this section to the conduct of research and to the provision of hospital care, nursing home care, domiciliary care, and medical services under this title.

* * * * * * *

(c) Regulations prescribed by the [Administrator] *Secretary* under sections [4131, 4132,] *4141, 4142,* and [4133] *4143* of this title may contain such definitions, and may provide for such safeguards and procedures (including procedures and criteria for the issuance and scope of court orders under section [§ 4132(b)(2)(C)] *4142(b)(2)(C)* of this title), as are necessary to prevent circumvention or evasion of such regulations or to facilitate compliance with such regulations.

(d) In prescribing and implementing such regulations, the [Administrator] *Secretary* shall, from time to time, consult with the Secretary of Health and Human Services and, as appropriate, with the President (or the delegate of the President) in order to achieve the maximum possible coordination of the regulations, and the implementation of the regulations, which they and the [Administrator] *Secretary* prescribe.

SUBCHAPTER IV—QUALITY ASSURANCE

§ 4151. Quality assurance program

(a) The [Administrator] *Secretary* shall—

(1) establish and conduct a comprehensive program to monitor and evaluate the quality of health care furnished by the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* (hereinafter in this section referred to as the "quality-assurance program"); and

(2) delineate the responsibilities of the Chief Medical Director with respect to the quality-assurance program, including the duties prescribed in this section.

(b)(1) As part of the quality-assurance program, the Chief Medical Director shall periodically evaluate—

(A) whether there are significant deviations in mortality and morbidity rates for surgical procedures performed by the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* from prevailing national mortality and morbidity standards for similar procedures; and

(B) if there are such deviations, whether they indicate deficiencies in the quality of health care provided by the [Department of Medicine and Surgery.] *Veterans Health Services and Research Administration.*

* * * * * * *

(c)(1) The Chief Medical Director shall—

(A) determine the prevailing national mortality and morbidity standards for each type of surgical procedure performed by the [Department of Medicine and Surgery;] *Veterans Health Services and Research Administration;* and

(B) collect data and other information on mortality and morbidity rates in the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* for each type of surgical procedure performed by the Department and (with respect to each such procedure) compile the data and other information so collected—

(i) for each medical facility of the [Veterans' Administration,] *Department,* in the case of cardiac surgery, heart transplant, and renal transplant programs; and

(ii) in the aggregate, for each other type of surgical procedure.

* * * * * * *

(e)(1) The [Administrator] *Secretary* shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the [Department of Medicine and Surgery] *Veterans Health Services and Research Administration* to carry out its responsibilities under this section.

(2) The Inspector General of the [Veterans' Administration] *Department* shall allocate sufficient resources (including sufficient personnel with the necessary skills and qualifications) to enable the Inspector General to monitor the quality-assurance program.

§ 4152. Quality-assurance reports

(a)(1) Not later than February 1 of 1987, 1989, and 1991, the Chief Medical Director shall submit to the [Administrator] *Secretary* a report on the experience through the end of the preceding fiscal year under the quality-assurance program carried out under section 4151 of this title.

* * * * * * *

(b) Not later than 60 days after receiving each such report, the [Administrator] *Secretary* shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a copy of the report, together with any comment concerning the report that the [Administrator] *Secretary* considers appropriate.

* * * * * * *

SUBCHAPTER VI—RESEARCH CORPORATIONS

§ 4161. Authority to establish; status

(a) The [Administrator] *Secretary* may authorize the establishment at any [Veterans' Administration] *Department* medical center of a nonprofit corporation to provide a flexible funding mechanism for the conduct of approved research at the medical center. Except as otherwise required in this subchapter or under regulations prescribed by the [Administrator,] *Secretary,* any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

(b) If by the end of the three-year period beginning on the date of the establishment of a corporation under this subchapter the corporation is not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, the [Administrator] *Secretary* shall dissolve the corporation.

§ 4162. Purpose of corporations

Any corporation established under this subchapter shall be established solely to facilitate research as described in section 4101(c)(1) of this title in conjunction with the applicable [Veterans' Administration] *Department* medical center. Any funds received by the [Administrator] *Secretary* for the conduct of research at the medical center other than funds appropriated to the [Veterans' Administration] *Department* may be transferred to and administered by the corporation for that purpose.

§ 4163. Board of directors; executive director

(a) The [Administrator] *Secretary* shall provide for the appointment of a board of directors for any corporation established under this subchapter. The board shall include—

(1) the director of the medical center, the chief of staff of the medical center, and the assistant chief of staff for research of the medical center; and

(2) subject to subsection (c) of this section, members who are not officers of employees of the Federal Government and who are familiar with issues involving medical and scientific research.

(b) Each such corporation shall have an executive director who shall be appointed by the Board of directors with concurrence of the Chief Medical Director of the [Veterans' Administration.] *Department.* The executive director of a corporation shall be responsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

(c) An individual appointed under subsection (a)(2) of this section to the board of directors of a corporation established under this subchapter may not be affiliated with, employed by, or have any other financial relationship with any entity that is a source of funding for research by the [Veterans' Administration] *Department* unless that source of funding is a governmental entity or an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

§ 4164. General powers

(a) * * *

* * * * * * *

(b) A corporation established under this subchapter may not spend funds for a research project unless the project is approved in accordance with procedures prescribed by the Chief Medical Director for research carried out with [Veterans' Administration] *De-*

partment funds. Such procedures shall include a peer review process.

* * * * * * *

§ 4166. Accountability and oversight

(a)(1)(A) The records of a corporation established under this subchapter shall be available to the [Administrator] *Secretary.*

(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the [Veterans' Administration] *Department* with respect to which the Inspector General of the [Veterans' Administration] *Department* has responsiblities under such Act.

* * * * * * *

(b) Each such corporation shall submit to the [Administrator] *Secretary* an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the [Administrator] *Secretary* for that year.

(c) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the [Veterans' Administration] *Department* who is involved in the functions of the corporation during any year—

(1) shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

(2) shall submit to the [Administrator] *Secretary* an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as Federal employees are requried to.

(d) The [Administrator] *Secretary* shall submit to the Committees on Veterans' Affiars of the Senate and House of Representatives an annual report on the number and location of corporations established and the amount of the contributions made to each such corporation.

§ 4167. Report to Congress

Not later than February 1, 1991, the [Administrator] *Secretary* shall submit to Congress a report on the experience through the end of fiscal year 1990 under this subchapter. The report shall include such recommendations as the [Administrator] *Secretary* considers appropriate.

* * * * * * *

SUBCHAPTER VII—NONPROFIT CORPORATIONS FOR VETERANS COMPENSATED WORK THERAPY PROGRAMS

§ 4171. Authority to establish; status

(a) The Secretary may authorize the establisment of one or more nonprofit corporations to provide a flexible funding mechanism for the conduct of Department compensated work therapy programs for veterans (including homeless veterans) in such community or communities as the Secretary may designate. Except as otherwise required in this subchapter or under regulations prescribed by the Secretary, any such corporation, and its directors and employees, shall be required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations.

(b) Any corporation established under this subchapter shall be established solely to facilitate the conduct of compensated work therapy programs for veterans.

(c) If, by the end of the three-year period beginning on the date of the establishment of a corporation under this subchapter, the corporation is not recognized as an entity the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, the Secretary shall dissolve the corporation.

§ 4172. Funds received by corporations

(a) Except for sums used as provided in subsection (b) of this section, funds received by a corporation established under this subchapter for the conduct of compensated work therapy programs shall be transferred to the Special Therapeutic and Rehabilitation Activities Fund established under section 618(c) of this title and shall be administered by the Secretary for conducting such programs.

(b)(1) Subject to paragraph (2) of this subsection, the corporation may use funds referred to in subsection (a) of this section to defray the administrative and fundraising expenses of the corporation.

(2) Expenditures of the corporation shall be approved in advance in accordance with procedures prescribed by the Secretary.

§ 4173. Board of directors; executive director

(a) The Secretary shall provide for the appointment of a board of directors for each corporation established under this subchapter. The board shall include—

(1) an officer or employee of the Department who—

(A) is in a field office of the Department in or near the community or communities for which the corporation is established; and

(B) is involved in the administration of section 618 of this title; and

(2) representatives of the community or communities for which the corporation is established who are not officers or employees of the Federal Government.

(b) Each such corporation shall have an executive director who shall be appointed by the board of directors with the concurrence of the Secretary. The executive director of a corporation shall be re-

sponsible for the operations of the corporation and shall have such specific duties and responsibilities as the board may prescribe.

§ 4174. General powers

A corporation established under this subchapter may—

(1) accept gifts and grants from, and enter into contracts with, individuals and public and private entitites solely for the purpose of facilitating the conduct of compensated work therapy programs;

(2) employ personnel to carry out such purpose; and

(3) fix the compensation of such personnel.

§ 4175. Applicable State law

Any corporation established under this subchapter shall be established in accordance with the nonprofit corporation laws of the State or States in which the community or communities for which the corporation is established are located and shall, to the extent not inconsistent with any Federal law, be subject to the laws of such State or States, as the case may be.

§ 4176. Accountability and oversight

(a)(1)(A) The records of a corporation established under this subchapter shall be available to the Secretary.

(B) For the purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, the programs and operations of such a corporation shall be considered to be programs and operations of the Department with respect to which the Inspector General of the Department has responsibilities under such Act.

(2) Such a corporation shall be considered an agency for the purposes of section 716 of title 31 (relating to availability of information and inspection of records by the Comptroller General).

(b) Each such corporation shall submit to the Secretary an annual report providing a detailed statement of its operations, activities, and accomplishments during that year. The corporation shall obtain a report of independent auditors concerning the receipts and expenditures of funds by the corporation during that year and shall include that report in the corporation's report to the Secretary for that year.

(c) Each member of the board of directors of a corporation established under this subchapter, each employee of such a corporation, and each employee of the Department who is involved in the functions of the corporation during any year—

(1) shall be subject to Federal laws and regulations applicable to Federal employees with respect to conflicts of interest in the performance of official functions; and

(2) shall submit to the Secretary an annual statement signed by the director or employee certifying that the director or employee is aware of, and has complied with, such laws and regulations in the same manner as is required of Federal employees.

(d) The Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives an annual report on the number and location of corporations established and the amount of the contributions made to each such corporation.

§ 4177. Report to Congress

Not later than February 1, 1993, the Secretary shall submit to Congress a report on the experience through the end of fiscal year 1992 under this subchapter. The report shall include such recommendations as the Secretary considers appropriate.

§ 4178. Expiration of authority

No corporation may be established under this subchapter after September 30, 1993.

§ 4179. Definition

For the purposes of this section, the term "compensated work therapy program" means any program of therapeutic and rehabilitative activities conducted under section 618 of this title.

CHAPTER 75—VETERANS' CANTEEN SERVICE

* * * * * * *

§ 4209. Child-care centers

(a)(1) * * *

* * * * * * *

(c) In connection with the establishment and operation of any child care center under this section, the Administrator—

(1) shall furnish, at no cost to the center, space in existing Veterans' Administration facilities and utilities, custodial services, and other services and amenities necessary (as determined by the Administrator) for the health and safety of the children provided care at the center.

(2) [may, on a reimbursable basis,] *may* convert space furnished under clause (1) of this subsection for use as the [child care] *child-care* center [and provide other items necessary for the operation of the center, including furniture, office machines and equipment, and telephone service, except that the Administrator may furnish basic telephone service and surplus furniture and equipment] without reimbursement;

(3) may provide, on a reimbursable basis, other items necessary for the operation of the center, including furniture, office machines and equipment, and telephone service, except that the Secretary may furnish basic telephone service and surplus furniture and equipment without reimbursement;

[(3)] *(4)* shall provide for the participation (directly or through a parent advisory committee) of parents of children receiving care in the center in the establishment of policies to govern the operation of the center and in the oversight of the implementation of such policies.

[(4)] *(5)* shall require the development and use of a process for determining the fitness and suitability of prospective employees of or volunteers at the center; and

[(5)] *(6)* shall require in connection with the operation of the center compliance with all State and local laws, ordinances, and regulations relating to health and safety and the operation of child-care centers.

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CHAPTER 76—HEALTH PROFESSIONAL EDUCATIONAL ASSISTANCE PROGRAM

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SUBCHAPTER V—RESERVE MEMBER STIPEND PROGRAM

4351. Authority for program.
4352. Eligibility: individuals entitled to benefits under the Reserve GI Bill program.
4353. Amount of reserve member stipend.
4354. Obligated service.
4355. Breach of agreement; liability.

SUBCHAPTER I—GENERAL

§ 4301. Establishment of program; purpose

(a) There is hereby established a program to be known as the Veterans' Administration Health Professionals Educational Assistance Program (hereinafter in this chapter referred to as the "Educational Assistance Program"). The program consists of—

(1) the scholarship program provided for in subchapter II of this chapter, [and]

(2) the tuition reimbursement program provided for in subchapter III of this [chapter.] *chapter, and*

(3) the reserve member stipend program provided for under subchapter V of this chapter.

* * * * * * *

§ 4302. Eligibility

(a)(1) To be eligible to participate in the Educational Assistance [Program,] *Program under subchapter I or II of this chapter,* an individual must be accepted for enrollment or be currently enrolled as a student at a qualifying educational institution in a course of education or training that is approved by the Administrator and that leads toward completion of a degree in a field of education or training for which a scholarship may be awarded under subchapter II of this chapter or for which tuition reimbursement may be provided under subchapter III of this chapter.

* * * * * * *

(b) An individual is not eligible to apply to participate in the Educational Assistance Program *under subchapter I or II of this chapter* if the individual is obligated under any other Federal program to perform service after completion of the course of education or training of such individual referred to in subsection (a) of this section.

* * * * * * *

§ 4304. Terms of agreement

An agreement between the Administrator and a participant in the Educational Assistance Program shall be in writing, shall be signed by the participant, and shall include the following provisions:

(1) The Administrator's agreement—

(A) to provide the participant with educational assistance as authorized in [subchapter II or III] *subchapters II, III, or V* of this chapter and specified in the agreement; and

(B) to afford the participant the opportunity for employment in the Department of Medicine and Surgery (subject to the availability of appropriated funds for such purpose and other qualifications established in accordance with section 4105 of this title).

(2) The participant's agreement—

(A) to accept such educational assistance;

(B) to maintain enrollment and attendance in the course of training until completed;

(C) while enrolled in such course, to maintain an acceptable level of academic standing (as determined by the educational institution offering such course of training under regulations prescribed by the Administrator); and

(D) after completion of the course of training, to serve as a full-time employee in the Department of Medicine and Surgery as specified in the agreement in accordance with [subchapter II or III] *subchapters II, III, or V* of this chapter.

* * * * * * *

(5) Such other terms as are required to be included in the agreement under [subchapter II or III] *subchapters II, III, or V* of this chapter or as the Administrator may require consistent with the provisions of this chapter.

* * * * * * *

SUBCHAPTER IV—ADMINISTRATIVE MATTERS

§ 4331. Periodic adjustments in amount of assistance

(a)(1) Whenever there is a general Federal pay increase, the Administrator shall increase the maximum monthly stipend [amount and] *amount,* the maximum tuition reimbursement *amount, and the maximum reserve members stipend* amount. Any such increase shall take effect with respect to any school year that ends in the fiscal year in which the pay increase takes effect.

* * * * * * *

(b) For the purposes of this section:

(1) The term "maximum monthly stipend amount" means the maximum monthly stipend that may be paid to a participant in the Scholarship Program specified in section 4313(b) of this title and as previously adjusted (if at all) in accordance with this subsection.

(2) The term "maximum tuition reimbursement amount" means the maximum amount of tuition reimbursement provided to a participant in the Tuition Reimbursement Program

specified in section 4322(e) of this title and as previously adjusted (if at all) in accordance with this subsection.

(3) The term "maximum reserve member stipend amount" means the maximum amount of a reserve member stipend that may be paid under subchapter V of this chapter, as provided in section 4353 of this title and as previously adjusted (if at all) in accordance with this subsection.

[(3)] *(4)* The term "general Federal pay increase" means an adjustment (if an increase) in the rates of pay under the General Schedule under subchapter III of chapter 51 of title 5.

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SUBCHAPTER V—RESERVE MEMBER STIPEND PROGRAM

§ 4351. Authority for program

As part of the Educational Assistance Program, the Secretary of Veterans Affairs may provide assistance in the form of reserve member stipends under this subchapter.

§ 4352. Eligibility: individuals entitled to benefits under the Reserve GI Bill program

(a) To be eligible to receive a reserve member stipend under this subchapter, an individual must—

(1) be accepted for enrollment or be enrolled as a full-time student at a qualifying educational institution in a course of education or training that is approved by the Secretary and that leads to completion of a degree in a health profession involving direct patient care or care incident to direct patient care;

(2) be receiving benefits under chapter 106 of title 10; and

(3) have scored above the 50th percentile on the Armed Forces Qualification Test.

(b) For purposes of subsection (a)(1) of this section, a qualifying educational institution is an accredited institution, as determined by the Secretary, located within a State.

§ 4353. Amount of reserve member stipend

The Secretary shall pay to an individual selected to receive a reserve member stipend under this subchapter the amount of $400 (adjusted in accordance with section 4331 of this title) for each month the individual is pursuing satisfactorily a program of education or training specified in the agreement entered into under section 4304 of this title. Payment of benefits under this section to an individual for any period shall be in addition to benefits paid to the individual for the same period under chapter 106 of title 10.

§ 4354. Obligated service

An individual receiving a reserve member stipend under this subchapter shall provide service in the full-time clinical practice of the individual's profession as a full-time employee of the Department for the period of obligated service specified in the agreement entered into under section 4304 of this title.

§ 4355. Breach of agreement; liability

(a)(1) Subject to paragraph (2), an individual who is receiving or has received a reserve member stipend under this subchapter and who fails to perform the service for which the individual is obligated under section 4354 of this title shall be liable to the United States in an amount determined in accordance with section 4317(c)(1) of this title.

(2) An indivdual who, as a result of performing active duty (including duty for training), is unable to perform the service for which the individual is obligated under section 4354 of this title shall be permitted to perform that service upon completion of the active duty service (or active duty for training). The Secretary may, by regulation, waive the requirement for the performance of the service for which the individual is obligated under section 4354 of this title in any case in which the Secretary determines that the individual is unable to perform the service for reasons beyond the control of the individual or in any case in which the waiver would be in the best interest of the individual and the United States.

(b) Any amount owed the United States under subsection (a) of this section shall be paid to the United States during the one-year period beginning on the date of the breach of the agreement.

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER Sec.

81. Acquisition and Operation of Hospital and Domiciliary Facilities; Procurement and [Supply] *Supply; Special Leases of Real Property* 5001
82. Assistance in Establishing New State Medical Schools; Grants to Affiliated Medical Schools; Assistance to Health Manpower Training Institutions 5070
83. Acceptance of Gifts and Bequests 5101
85. Disposition of Deceased Veterans' Personal Property 5201

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND [SUPPLY] *SUPPLY; SPECIAL LEASES OF REAL PROPERTY*

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SUBCHAPTER V—SPECIAL LEASES OF REAL PROPERTY

5061. Definitions.
5062. Enhanced-use leases.
5063. Requirements relating to designation of a property.
5064. Special dispositions of leased properties.
5065. Disposition of proceeds.
5066. Construction standards.
5067. Exemption from state and local taxes.
5068. Limitations on number of agreements.
5069. Expiration.

* * * * * * *

SUBCHAPTER IV—SHARING OF MEDICAL FACILITIES, EQUIPMENT, AND INFORMATION

§ 5051. Statement of congressional purpose

It is the purpose of this subchapter to improve the quality of hospital care and other medical service provided veterans under this title, by authorizing the Administrator to enter into agreements with medical schools, [hospitals,] *health-care facilities,* and research centers throughout the country in order to receive from and share with such medical schools, [hospitals,] *health-care facilities,* and research centers the most advanced medical techniques and information, as well as certain specialized medical resources which otherwise might not be feasibly available or to effectively utilize other medical resources with the surrounding medical community, without diminution of services to veterans. Among other things, it is intended, by these means, to strengthen the medical programs at those Veterans' Administration hospitals which are located in small cities or rural areas and thus are remote from major medical centers.

*   *   *   *   *   *   *

§ 5053. Specialized medical resources

(a) To secure certain specialized medical resources which otherwise might not be feasibly available, or to effectively utilize certain other medical resources, the Administrator may, when the Administrator determines it to be in the best interest of the prevailing standards of the Veterans' Administration medical care program, make arrangements, by contract or other form of agreement, as set forth in clauses (1) and (2) below, between Veterans' Administration [hospitals] *health-care facilities* and other [hospitals (or other medical installations having hospital] *health-care* facilities [or] *(including* organ banks, blood banks, or similar [institutions)] *institutions), research centers,* or medical [schools or clinics in the medical community:] *schools:*

(1) for the mutual use, or exchange of use, of specialized medical resources when such an agreement will obviate the need for a similar resource to be provided in a Veterans' Administration health care facility; or

(2) for the mutual use, or exchange of use, of specialized medical resources in a Veterans' Administration health care facility, which have been justified on the basis of veterans' care, but which are not utilized to their maximum effective capacity.

[The Administrator may determine the geographical limitations of a medical community as used in this section.]

(b) Arrangements entered into under this section shall provide for reciprocal reimbursement based on a [charge which covers the full cost of services rendered, supplies used, and including normal depreciation and amortization costs of equipment,] *methodology that provides appropriate flexibility to the heads of the facilities concerned to establish an appropriate reimbursement rate after taking into account local conditions and needs and the actual costs to the providing facility of the resource involved.* Any proceeds to the Government received therefrom shall be credited to the applicable Veterans' Administration medical [appropriation.] *appropriation and to funds that have been allotted to the facility that furnished the resource involved.*

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SUBCHAPTER V—SPECIAL LEASES OF REAL PROPERTY

§ 5061. Definitions

For the purposes of this subchapter:

(1) The term "enhanced-use lease" means a written agreement for the lease of designated property at a Department facility for a use that (A) will, at least in part, contribute in a cost-effective manner to the mission of the Department, and (B) will be consistent with and not adversely affect that mission.

(2) The term "designated property" means any real property under the jurisdiction or control of the Secretary and identified by the Secretary in a notice of designation.

(3) The term "notice of designation" means a written notice by the Secretary to the Committees identifying designated property with respect to which the Secretary proposes to enter into an enhanced-use lease.

(4) The term "Committees" means the Committees on Veterans' Affairs of the Senate and the House of Representatives.

§ 5062. Enhanced-use leases

(a)(1)(A) Notwithstanding section 5022 of this title, section 321 of the Act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483 and 484), and any other provision of law inconsistent with this section, the Secretary may enter into enhanced-use leases with respect to any designated property and may dispose of such property in accordance with section 5064 of this title.

(B) The Secretary may enter into an enhanced-use lease under this subchapter only if the Secretary determines that the proposed lease—

(i) will provide, at least in part, a cost-effective means of carrying out or providing appropriate space for an activity contributing to the mission of the Department; and

(ii) will be consistent with and not adversely affect the mission of the Department.

(2) The provisions of the Act of March 31, 1931 (46 Stat. 1494; 40 U.S.C. 276a et seq.), section 421 of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322; 102 Stat. 552), Federal laws relating to environmental and historic preservation, and title 31, United States Code, shall not, by virtue of this section, become inapplicable to a designated property.

(3) A designated property shall not be considered unutilized or underutilized for purposes of section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

(b)(1) The selection of a lessee under an enhanced-use lease shall be made pursuant to competitive procedures prescribed, after consultation with the Administrator of General Services, by the Secretary.

(2) The term of an enhanced-use lease may not exceed—

(A) 35 years in the case of a lease involving the construction of a new building or the substantial rehabilitation of an existing building, as determined by the Secretary; or

(B) 20 years in the case of a lease not described in subparagraph (A) of this paragraph.

(3)(A) Each enhanced-use lease entered into under this subchapter shall be for fair consideration, as determined by the Secretary. Consideration under such a lease may be provided in cash or in-kind, or a combination of the two.

(B) Consideration in-kind may include goods or services of benefit to the Department, including construction, repair, remodeling, or other physical improvements of Department facilities, maintenance of Department facilities, or the provision of office, storage, or other usable space.

(4) In determining whether the consideration provided for in an enhanced-use lease is fair consideration, the Secretary shall take into account the value of any goods or services to be provided by the Federal Government to or for the benefit of the lessee.

(c)(1) Subject to paragraph (2) of this subsection, a designation by the Secretary of any land or improvement described in section 421(b)(2) of the Veterans' Benefits and Services Act of 1988 (Public Law 100–322; 102 Stat. 552) as a designated property shall be considered to be a prohibited action under that section to dispose of the land or improvement.

(2) A designation by the Secretary of any land or improvement described in such section 421(b)(2) for an enhanced-use lease shall not be considered to be a prohibited action under that section if, under the lease—

(A) the designated property may be used solely for child-care services;

(B) such services must be provided exclusively for the benefit of employees of the Department, individuals employed on the premises of such land, and employees of a health-personnel educational institution that is affiliated with a Department facility;

(C) the majority of the employees benefited by such services must be employed by the Department; and

(D) the majority of the children served must be the children of employees of the Department.

§ 5063. Requirements relating to designation of a property

(a) Before the Secretary designates a property for an enhanced-use lease, the Secretary shall conduct, in the local community in which the property is located, a public hearing to receive the views of veterans service organizations, local commercial enterprises, and other interested parties regarding the proposed lease and the possible effects of the lease, including the effects of the lease—

(1) on local commerce and other aspects of the local community;

(2) on programs administered by the Department; and

(3) on services to veterans in the local community.

(b) Before conducting any public hearing referred to in paragraph (1) of this subsection, the Secretary shall provide veterans, residents,

and businesses in the local community with reasonable notice of the proposed lease, including—

(1) the time and place of the hearing;

(2) identification of the property proposed to be leased;

(3) a description of the proposed uses of the property;

(4) a description of the proposed lease, and

(5) a description of how the proposed lease—

(A) will contribute cost-effectively to, be consistent with, and not adversely affect the mission of the Department; and

(B) will affect services to veterans.

(c)(1) If, following the conduct of a hearing under subsection (b) of this section, the section, the Secretary intends to designate the property involved, the Secretary shall notify the Committees of the Secretary's intention to designate the property, and shall publish a notice of such intention in the Federal Register.

(2) An enhanced-use lease may not be entered into with respect to any property unless the notice required under paragraph (1) of this subsection is provided to the Committees and published in the Federal Register—

(A) at least 90 days before the date on which the Secretary provides the Committees with notice of the designation of the property pursuant to paragraph (4) of this subsection if the notice is submitted to the Committees during the period beginning January 1 and ending March 31; or

(B) at least 180 days before such date if the notice is submitted to the Committees during the period beginning April 1 and ending December 31.

(3) Each notice of intention to designate shall include the following:

(A) Identification of the property involved.

(B) An explanation of the background, rationale, and economic factors in support of the proposed lease.

(C) A summary of the views expressed by interested parties at the public hearing conducted in connection with the proposed designation together with a summary of the Secretary's response to those views.

(D) A general description of the proposed lease.

(E) A description of how the proposed lease—

(i) will contribute cost-effectively to, be consistent with, and not adversely affect the mission of the Department; and

(ii) will affect services to veterans.

(4) Not less than 30 days before entering into an enhanced-use lease, the Secretary shall provide the Committees a report thereon containing (A) updated information with respect to the matters described in paragraph (3) of this subsection, (B) a summary of a cost-benefit analysis of the proposed lease, (C) a description of the provisions of the proposed lease, and (D) a notice of the designation of the property.

(5) Not less than 10 days before entering into an enhanced-use lease, the Secretary should provide the Committees with copies of the proposed lease.

§ 5064. Special dispositions of leased properties

(a) If, during the term of an enhanced-use lease or within 30 days after the expiration of the term of the lease, the Secretary determines that the leased property is not needed by the Department in the discharge of its responsibilities, the Secretary may initiate action for the disposal of leased property to the lessee by requesting the Administrator of General Services to carry out a special disposition of the property pursuant to subsection (b) of this section. The Administrator, upon request of the Secretary, shall take appropriate action under this title to dispose of property of the Department that is or has been subject to an enhanced-use lease.

(b) A special disposition under this section may be made for cash or such other consideration as the Secretary and the Administrator of General Services jointly determine is in the best interest of the United States and upon such other terms and conditions as the Administrator considers appropriate. In carrying out a special disposition of property under this section, the Administrator may utilize any other authority to the Administrator under any other provision of law.

(c) Not less than 90 days before a special disposition of property is made under this section, the Secretary shall notify the Committees of the Secretary's intent to dispose of the property and publish notice of the proposed disposition in the Federal Register. The notice shall describe the background, rationale, and economic factors in support of the proposed special disposition (including a cost-benefit analysis summary), the intended consideration, and the method, terms, and conditions of the proposed disposition.

§ 5065. Disposition of proceeds

Funds received by the Department under an enhanced-use lease or from a special disposition of leased property shall be deposited in the nursing home revolving fund established under section 5016 of this title and shall be administered as part of that fund. An amount sufficient to pay for any expenses incurred by the Secretary in connection with any enhanced-use lease entered into by the Secretary under this subchapter shall be deducted from the proceeds of the lease and used by the Secretary to reimburse the account from which the funds were used to pay such expenses, and an amount sufficient to pay any expenses incurred by the Administrator of General Services in connection with the special disposition of any property shall be deducted from the proceeds of the sale and used by the Administrator to reimburse the account from which funds were used to pay such expenses.

§ 5066. Construction standards

Unless the Secretary provides otherwise, the construction, alteration, repair, remodeling, or improvement of any property that is the subject of an enhanced-use lease shall comply with all standards applicable to construction of Federal buildings, but shall not be subject to any State or local law relating to building codes, permits, or inspections. When Federal construction standards are applicable to such property, the Secretary shall conduct periodic inspections of the construction for the purpose of ensuring that the standards are met.

§ 5067. Exemption from state and local taxes

The Department's interest in any enhanced-use lease and in any property subject to such an agreement shall not be subject, directly or indirectly, to any State or local laws relative to taxation, fees, assessments, or special assessments, except sales taxes associated with the construction, alteration, repair, remodeling, or improvement carried out under this title.

§ 5068. Limitations on number of agreements

(a) Not more than 30 enhanced-use leases may be entered into under this title and not more than 10 such leases may be entered into in any fiscal year.

(b) A lease entered into by the Secretary shall not be considered an enhanced-use lease for the purposes of the limitations provided in subsection (a) of this section if the primary use made of the leased premises is the provision of child-care services for employees of the Department.

§ 5069. Expiration

No enhanced-use lease may be entered into under this subchapter after September 30, 1994.

CHAPTER 82—ASSISTANCE IN ESTABLISHING NEW STATE MEDICAL SCHOOLS; GRANTS TO AFFILIATED MEDICAL SCHOOLS; ASSISTANCE TO HEALTH MANPOWER TRAINING INSTITUTIONS

* * * * * * *

SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE VETERANS' ADMINISTRATION TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

5091. Declaration of purpose.
5092. Definition.
5093. Grants.
5094. Authorization of appropriations.

* * * * * * *

SUBCHAPTER III—ASSISTANCE TO PUBLIC AND NONPROFIT INSTITUTIONS OF HIGHER LEARNING, HOSPITALS AND OTHER HEALTH MANPOWER INSTITUTIONS AFFILIATED WITH THE VETERANS' ADMINISTRATION TO INCREASE THE PRODUCTION OF PROFESSIONAL AND OTHER HEALTH PERSONNEL

§ 5091. Declaration of purpose

The purpose of this subchapter is to authorize the Administrator to carry out a program of grants to provide assistance in the establishment of cooperative arrangements among universities, colleges, junior colleges, community colleges, schools of allied health professions, state and local systems of education, hospitals, and other nonprofit health manpower institutions affiliated with the Veterans' Administration, designed to coordinate, improve, and expand the training of professional and technical allied health and paramedical personnel, and *(in collaboration with representatives of the professions the members of which are currently responsible for carrying out the duties involved)* to assist in developing and evaluating new health careers, interdisciplinary approaches and career advancement opportunities, so as to improve and expand allied and other health manpower utilization.

* * * * * * *

§ 5094. Authorization of appropriations

(a) There is authorized to be appropriated for the purpose of making grants under this subchapter $5,000,000 for each of fiscal years 1991 and 1992 and $6,000,000 for each of fiscal years 1993 and 1994.

(b) The sum appropriated for a fiscal year pursuant to subsection (a) of this section shall remain available until the end of the fifth fiscal year following the fiscal year for which the sum is appropriated.

(c) Of the funds appropriated for each fiscal year pursuant to the authorization in subsection (a) of this section, an amount not to exceed 10 percent of the sum so appropriated may be expended for the purpose described in section 5096(2) of this title.

* * * * * * *

VETERANS' DIOXIN AND RADIATION EXPOSURE COMPENSATION STANDARDS ACT

(Public Law 98-542, October 24, 1984)

* * * * * * *

REQUIREMENT FOR AND CONTENT OF REGULATIONS

SEC. 5. In carrying out the responsibilities of the Administrator of Veterans' Affairs under section 354(a)(2) of title 38, United States Code, and in order to promote consistency in claims processing and decisions, the Administrator shall prescribe regulations to—

(1) establish guidelines and (where appropriate) standards and criteria for the resolution of claims for benefits under laws administered by the Veterans' Administration where the criteria for eligibility for a benefit include a requirement that a death or disability be service connected and the claim of service connection is based on a veterans' exposure during service—

(A) in the Republic of Vietnam during the Vietnam era to a herbicide containing dioxin, [or]

(B) in connection with such veterans' participation in atmospheric nuclear tests or with the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, to ionizing radiation from the detonation of a nuclear [device; and] *device, or*

(C) in connection with such veteran's participation in an activity listed pursuant to section 10, to ionizing radiation; and

(2) ensure that, with respect to those claims, the policy of the United States described in section 2(13) is carried out.

(b)(1)(A) * * *

* * * * * * *

(2)(A)(i) * * *

* * * * * * *

(B) The diseases referred to in subparagraph (A) are those specified in section 2(5) and any other disease with respect to which the Administrator finds (after receiving and considering the advice of the appropriate panel of the Scientific Council established under section 6(d)(2)) that there is sound scientific or medical evidence indicating—

(i) a connection to exposure to a herbicide containing dioxin, in the case of a veteran who was exposed to that herbicide during such veteran's service in the Republic of Vietnam during the Vietnam era, **[**or**]**

(ii) a connection to exposure to ionizing radiation, in the case of a veteran who was exposed to ionizing radiation in connection with such veteran's participation in an atmospheric nuclear test or with the American occupation of Hiroshima or Nagasaki, Japan, before July 1, **[**1946.**]** *1946, or*

(iii) a connection to exposure to ionizing radiation, in the case of a veteran who participated, or a category of veterans who participated, in an activity listed pursuant to section 10.

(3) The regulations prescribed under this section shall include—

(A) specification of the maximum period of time after exposure to such herbicide or ionizing radiation for the development of those diseases; and

(B) a requirement that a claimant filing a claim based upon a veteran's exposure to a herbicide containing dioxin or to ionizing radiation from the detonation of a nuclear device *or from participation in an activity listed pursuant to section 10* may not be required to produce evidence substantiating the veteran's exposure **[**during active military, naval, or air service**]** *while serving on active duty, active duty for training, or inactive duty training* if the information in the veteran's service records and other records of the Department of Defense is not inconsistent with the claim that the veteran was present where and when the claimed exposure occurred.

* * * * * * *

OTHER ACTIVITIES INVOLVING EXPOSURE TO IONIZING RADIATION

SEC. 10. (a) IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE.—(1) Not later than 210 days after the date of the enactment of the Veterans Benefit and Health Care Amendments of 1990, the Secretary of Veterans Affairs (hereafter in this section referred to as the "Secretary"), in consultation with the Secretary of Defense, shall identify not less than three activities (other than the activities described in paragraph (3)(B) of section 312(c) of title 38, United States

Code) in which individuals serving on active duty, active duty for training, or inactive duty training have participated and which likely would have exposed such individuals to levels of ionizing radiation above background levels. In identifying the activities, the Secretary shall to the extent feasible consider the number and level of exposure of individuals and shall—

(A) describe the times and places at which exposure to each listed activity may have occurred;

(B) specify the maximum level of radiation to which participants or categories of participants in each listed activity may have been exposed;

(C) provide information sufficient to make possible the identification of the individuals who, while so serving, participated in each of the activities; and

(D) estimate the maximum number of individuals who participated in each of the activities.

(2) Not later than October 1 of each of the fiscal years 1991, 1992, and 1993, the Secretary shall identify not less than three additional activities determined in the manner prescribed in paragraph (1).

(b) EVALUATION BY THE ADVISORY COMMITTEE ON ENVIRONMENTAL HAZARDS.—Immediately after the Secretary identifies an activity pursuant to subsection (a), the Secretary shall direct the Advisory Committee (established under section 6) to evaluate, and make a finding as to, whether participation by any veteran or category of veterans in the activity resulted in an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in a "radiation-risk activity" as defined in section 312(c) of title 38, United States Code. Evaluations and findings made pursuant to this subsection shall be made on the basis of available scientific evidence.

(c) REPORT OF EVALUATION.—The Advisory Committee promptly shall make the evaluation required by subsection (b) with respect to each activity identified pursuant to subsection (a) and, not later than 120 days after receiving a direction under subsection (b), submit to the Secretary a report regarding the results of the evaluation. The Advisory Committee shall include in the report its findings and such recommendations as it considers appropriate to assist the Secretary in carrying out subsection (d).

(d) DETERMINATIONS.—The Secretary shall, within 60 days after receiving a report of an evaluation under subsection (c), list each activity identified pursuant to subsection (a) unless the Secretary determines (based on the report of the Advisory Committee under subsection (c) and all other relevant scientific evidence, information, and analysis available to the Secretary at the time of the determination) that the activity did not result in an opportunity for exposure to ionizing radiation comparable to that of veterans who participated in a "radiation-risk-activity", as defined in section 312(c) of title 38, United States Code.

(e)(1) REPORTS TO CONGRESSIONAL COMMITTEES.—Within five days after the first activity is identified pursuant to subsection (a), the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report of the activity and provide the information specified in subsection (a)(1)(A) through (D).

Thereafter, whenever an activity is so identified, the Secretary shall immediately report that fact to such committees.

(2) Within 120 days after receiving a report of an evaluation under subsection (c), the Secretary shall submit to such committees a copy of that report and a report of the actions that the Secretary has taken and is planning to take with respect to the matters pertaining to the evaluation.

(f) DEFINITIONS.—For the purpose of this section, the terms "active duty", "active duty for training", and "inactive duty training" shall have the meanings provided in paragraphs (21), (22), and (23), respectively, of section 101 of title 38, United States Code.

* * * * * * *

VETERANS' HOME LOAN PROGRAM IMPROVEMENTS AND PROPERTY REHABILITATION ACT OF 1987

(Public Law 100-198, December 21, 1987)

* * * * * * *

SEC. 9. PROPERTY MANAGEMENT.

(a) HOMELESS PROGRAM.—(1) To assist homeless veterans and their families acquire [shelter,] *shelter and to provide transitional housing for veterans recovering from substance abuse or mental illness disabilities*, the Administrator of Veterans' Affairs may enter into agreement described in paragraph (2) of this subsection with—

(A) nonprofit organization, with preference being given to any organization named in, or approved by the Administrator under, section 3402 of title 38, United States Code; or

(B) any State, as defined in section 101(20) of such title, or any political subdivision thereof.

(2) To carry out paragraph (1) of this subsection, the Administrator may enter into agreements to sell property, and improvements thereon, acquired by the Administrator as the result of a default on loan made or guaranteed under chapter 37 of title 38, United States Code. Such sale shall be for such consideration as the Administrator determines is in the best interests of [homeless] veterans *who are to occupy the property* and the Federal Government.

(3) The Administrator may enter into an agreement under paragraph (1) only if—

(A) the Administrator determines that such an action will not adversely affect the Veterans' Administration's ability—

(i) to fulfill its statutory missions with respect to the Veterans' Administration loan guaranty program and the short- and long-term solvency of the Loan Guaranty Revolving Fund under such chapter 37; or

(ii) to carry out other functions and administer other programs authorized by law;

(B) the entity to which the property is sold agrees to (i) utilize the property solely as a shelter primarily for homeless veterans and their [families,] *families or as transitional housing* *for veterans who, at the time of entering the housing, are being furnished services by the Secretary, directly or by contract, for alcohol or drug dependence or abuse disabilities or mental illness disabilities or who, at any time within 90 days preceding the date of entering the housing, have been furnished such services by the Secretary for such purposes,* (ii) comply with all zoning laws relating to the property, (iii) make no use of the property that is not compatible with the area where the property is located, and (iv) take such other actions as the Administrator determines are necessary or appropriate in the best interests of [homeless] veterans *who are to occupy the property* and the Federal Government; and

(C) the Administrator determines that there is no significant likelihood of the property being sold for a price sufficient to reduce the liability of the Veterans' Administration or the veteran who had defaulted on the loan guaranteed under such chapter 37.

* * * * * * *

(c) Termination.—The authority provided in subsections (a) and (b) shall terminate on [October 1, 1990.] *December 31, 1993.*

(d) Report.—The Administrator of Veterans' affairs shall, by March 1, 1990, *and March 1 of each of the next three years* transmit to the Congress a report of the activities carried [out, through December 31, 1989,] *out* under this [section.] *section through December 31 of the preceding year.*

* * * * * * *

VETERANS' BENEFITS AND SERVICES ACT OF 1988

(Public Law 100-322 as amended by § 201(c) of Public Law 101-237, May 20, 1988)

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TITLE I—HEALTH-CARE PROGRAMS

* * * * * * *

Part B—Pilot Programs and Reports

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SEC. 113. PILOT PROGRAM OF MOBILE HEALTH-CARE CLINICS.

(a) * * *

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(b) Funding.—There is authorized to be appropriated $5,000,000 for each of fiscal years [1989 and 1990] *1989, 1990, and 1991* in order to carry out this section. No funds may be used for the pilot program unless specifically appropriated for that purposes. *Funds appropriated to carry out the pilot program authorized by this section shall remain available until expended.*

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SEC. 115. PILOT PROGRAM OF COMMUNITY-BASED RESIDENTIAL CARE FOR HOMELESS CHRONICALLY MENTALLY ILL AND OTHER VETERANS.

(a) * * *

(d) DURATION OF PROGRAM.—The authority for the pilot program authorized by this section expires on September 30, [1992.] *1993.*

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DEPARTMENT OF VETERANS AFFAIRS ACT

(Public Law 100–527, October 25, 1988)

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SEC. 3. PRINCIPAL OFFICERS.

(a) * * *

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(b) CHIEF MEDICAL DIRECTOR.—(1) * * *

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(2)(A) Whenever a vacancy in the position of Chief Medical Director occurs or is anticipated, the Secretary of Veterans Affairs shall establish a commission to recommend individuals to the President for appointment to the position.

(B) A commission established under this paragraph shall be composed of the following members appointed by the Secretary:

(i) Three persons representing clinical care and medical research and education activities affected by the Veterans Health Services Research Administration.

(ii) [Two] *Four* persons representing veterans served by the Veterans Health Services and Research Administration.

(iii) Two persons who have experience in the management of veterans health services and research programs, or programs of similar content and scope.

(iv) The Deputy Secretary of Veterans Affairs.

(v) The Chairman of the Special Medical Advisory Group established under section 4112 of title 38, United States Code.

(vi) One person who has held the position of Chief Medical Director, if the Secretary determines that it is desirable for such person to be a member of the Commission.

(vii) one person, selected by the Secretary in the Secretary's discretion, from among persons in categories described in clauses (i), (ii), (iii), and (vi).

* * * * * * *

(c) CHIEF BENEFITS DIRECTOR.—(1) * * *

* * * * * * *

(2)(A) Whenever a vacancy in the position of Chief Medical Director occurs or is anticipated, the Secretary of Veterans Affairs shall establish a commission to recommend individuals to the President for appointment to the position.

(B) A commission established under this paragraph shall be composed of the following members appointed by the Secretary:

(i) Three persons representing education and training, real estate, mortgage finance, and related industries, and survivor benefits activities affected by the Veterans Benefits Administration.

(ii) [Two] *Four* persons representing veterans served by the Veterans Health Services and Research Administration.

(iii) Two persons who have experience in the management of veterans health services and research programs, or programs of similar content and scope.

(iv) The Deputy Secretary of Veterans Affairs.

(v) The Chairman of the Veterans' Advisory Committee on Education formed under section 1792 of title 38, United States Code.

(vi) One person who has held the position of Chief Benefits Director, if the Secretary determines that it is desirable for such person to be a member of the Commission.

(vii) one person, selected by the Secretary in the Secretary's discretion, from among persons in categories described in clauses (i), (ii), (iii), and (vi).

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SEC. 4. ASSISTANT SECRETARIES.

(a) * * *

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(b) FUNCTIONS OF ASSISTANT SECRETARIES.—The Secretary shall assign to Assistant Secretaries such functions as the Secretary considers appropriate, including the following functions:

(1) Budgetary and financial functions.

(2) Personnel management and labor relations functions.

(3) Planning, studies, and evaluations.

(4) Management, productivity, and logistic support functions.

(5) Information management functions as required by section 3506 of title 44, United States Code.

(6) Capital facilities and real property program functions.

(7) Equal opportunity functions.

(8) Functions regarding the investigation and adjudication of complaints of employment discrimination within the Department.

(9) Functions regarding intergovernmental, public, and consumer information and affairs.

(10) Procurement functions.

(11) The review and assessment of the effects of policies, regulations, and programs and other activities of the Department on minority veterans and the coordination and monitoring of policies facilitating access of such veterans to services and benefits provided under laws administered by the Secretary.

* * * * * * *

(g) Definitions.—As used in this section:

(1) The term "minority veterans" means veterans who are—

(A) black individuals;

(B) Native Americans;
(C) Hispanic-Americans;
(D) Asian-Americans;
(E) Pacific-Islander-Americans; and
(F) women.

(2) The term "veteran" has the meaning given that term in section 101(2) of title 38, United States Code.

(3) The term "Native American" means an Indian, a Native Hawaiian, or an Alaska Native.

(4) The term "Indian" has the meaning given that term in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(a)).

(5) The term "Native Hawaiian" has the meaning given that term in section 815(3) of the Native American Programs Act of 1974 (42 U.S.C. 2992c(3)).

(6) The term "Alaska Native" has the meaning given the term "Native" in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

(7) The term "Asian-American" means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Far East, Southeast Aisa, or the Indian subcontinent of Asia.

(8) The term "Pacific-Islander-American" means any citizen or permanent resident of the United States, other than a Native American, whose ancestral origin is in any of the original peoples of the Pacific Islands.

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STEWART B. McKINNEY HOMELESS ASSISTANCE AMENDMENTS ACT OF 1988

(Public Law 100–628, November 7, 1988)

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TITLE VIII—VETERANS PROGRAMS

SEC. 801. MEDICAL PROGRAMS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the [Veterans' Administration for each of fiscal years 1989 and 1990, in addition to any funds appropriated pursuant to any other authorization (whether definite or indefinite) of appropriations for those fiscal years, the sum of $30,000,000 for the medical care of veterans by the Veterans' Administration.] *Department of Veterans Affairs $30,000,000 for each of the fiscal years 1989 and 1990; $50,000,000 for fiscal year 1991; $57,500,000 for fiscal year 1992; and $65,000,000 for fiscal year 1993. Funds appropriated pursuant to this section shall be in addition to any funds appropriated pursuant to any other authorizations (whether definite or indefinite) for such fiscal years.*

(b) DOMICILIARY CARE.—*(1)* Of the amount appropriated pursuant to subsection (a), **[**50 percent**]** *the amounts specified in paragraph (2)* shall be available for—

[(1)**]** *(A)* converting to use for domiciliary care beds the underused space located in facilities under the jurisdiction of the Administrator of Veterans' Affairs in urban areas in which there are significant numbers of homeless veterans; and

[(2)**]** *(B)* furnishing domiciliary care in such beds to eligible veterans (primarily homeless veterans) who are in need of such care.

(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

(A) For fiscal year 1989, $15,000,000.
(B) For fiscal year 1990, $15,000,000.
(C) For fiscal year 1991, $20,000,000.
(D) For fiscal year 1992, $22,500,000.
(E) For fiscal year 1993, $25,000,000.

(c) CHRONICALLY MENTALLY ILL HOMELESS VETERANS.—*(1)* Of the amount appropriated pursuant to subsection (a), **[**50 percent**]** *the amounts specified in paragraph (2)* shall be available for furnishing care and treatment and rehabilitative services under section 115 of the Veterans Benefits and Services Act of 1988 (Public Law 100-322; 102 Stat. 501) to homeless veterans who have a chronic mental illness disability. Not more than $500,000 of the amount available under the preceding sentence shall be used for the purpose of monitoring the furnishing of such care and services and, in furtherance of such purpose, maintaining in the Veterans' Administration the equivalent of 10 full-time employees.

(2) The amounts available for the purposes referred to in paragraph (1) are as follows:

(A) For fiscal year 1989, $15,000,000.
(B) For fiscal year 1989, $15,000,000.
(C) For fiscal year 1989, $30,000,000.
(D) For fiscal year 1989, $35,000,000
(E) For fiscal year 1989, $40,000,000.

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VETERANS' BENEFITS IMPROVEMENT ACT OF 1988

(Public Law 100-687, November 18, 1988)

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DIVISION B—VETERANS' BENEFITS IMPROVEMENT

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TITLE XII—AGENT ORANGE AND RELATED PROVISIONS

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SEC. 1204. OUTREACH SERVICES.

(a) ONGOING OUTREACH PROGRAM.—*(1)* The Administrator shall conduct an active, continuous outreach program for furnishing to veterans of active military, naval, or air service who served in the Republic of Vietnam during the Vietnam era information relating to—

[(1)] *(A)* the health risks (if any) resulting from exposure during that service to dioxin or any other toxic agent in herbicides used in support of United States and allied military operations in the Republic of Vietnam during the Vietnam [era, as such information on health risks becomes known;] *era;* and

[(2)] *(B)* services and benefits available to such veterans with respect to such health risks.

(2) The Secretary of Veterans Affairs shall annually furnish updated information on health risks described in paragraph (1)(A) to veterans referred to in paragraph (1).

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SEC. 1205. RANCH HAND STUDY.

(a) * * *

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(c) ADVISORY RELATIONSHIP.—The Advisory Committee may consult directly with and provide information and recommendations directly to the Department of the Air Force scientists conducting the Ranch Hand Study, and such scientists may consult directly with and provide information and recommendations directly to the Advisory Committee. No officer or employee of the Federal Government may intervene in or impair direct communication between the Advisory Committee and such scientists under this section except as may be necessary to prevent an inappropriate disclosure of classified information.

[(c)] *(d)* SCHEDULE OF REPORTS.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Veterans' Affairs and the Committees on Armed Services of the Senate and the House of Representatives a schedule of reports to be prepared by the Secretary of the Air Force or the Secretary of Defense on the progress and findings of the Ranch Hand Study. The schedule shall provide for the preparation and submission of annual reports and a final report.

* * * * * * *

(4) The Secretary of Defense shall submit to the committees referred to in paragraph (1) a copy of each referred to *in* that paragraph.

[(d)] *(e)* DEFINITIONS.—For purposes of this section:

(1) The term "Ranch Hand Advisory Committee" means the committee known as the "Advisory Committee on Special Studies Relating to the Possible Long-term Health Effects of Phenoxy Herbicides and Contaminants" established by the Secretary of Defense to monitor the conduct of the Ranch Hand Study.

(2) The term "Ranch Hand Study" means the special study conducted by the Secretary of the Air Force relating to the possible long-term health effects of phenoxy herbicides and

contaminants on Air Force personnel who participated in Operation Ranch Hand in the Republic of Vietnam during the Vietnam era.

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VETERANS' BENEFITS AMENDMENTS OF 1989

(Public Law 101-237, December 18, 1989)

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TITLE IV—EDUCATION AND EMPLOYMENT

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SEC. 408 PILOT PROGRAM TO FURNISH EMPLOYMENT AND TRAINING INFORMATION AND SERVICE TO MEMBERS OF THE ARMED FORCES SEPARATING FROM THE ARMED FORCES.

(a) * * *

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[(c) UTILIZATION OF SPECIFIC PERSONNEL.—The Secretary shall utilize disabled veterans' outreach program specialists or local veterans' employment representatives to the maximum extent feasible to furnish employment and training information and service under the pilot program.]

(c) RESOURCES.—(1) The Secretary of Labor shall request resources and participation necessary to support the pilot program referred to in this section from the Secretary of Defense and the Secretary of Veterans Affairs. The Secretary of Labor shall provide for the coordination of the resources and participation so provided.

(2) The Secretary may request resources and participation necessary to support the pilot program referred to in this section from, to the extent feasible, representatives of veterans; service organizations.

(3) The Secretary shall utilize disabled veterans' outreach program specialists of local veterans' employment representatives, to the maximum extent feasible, to furnish employment and training information and services under the pilot program.

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APPENDIX

SUMMARY OF COMMITTEE INVESTIGATION OF VA PROSTHETICS AND SPECIAL-DISABILITIES PROGRAMS

The timely provision of prosthetic services and appliances has long been a concern to the Committee. In each of the last three fiscal years, the provisions of prosthetic services and appliances has been severely hampered by budget shortfalls within VA's Prosthetic and Sensory Aids Service (PSAS). According to information from VA White Papers and other VA sources, at the end of FY 1987, 5,200 prosthetic orders were backlogged. This number rose to 7,550 at the end of FY 1988, a 45-percent increase in orders apparently not filled due to funding deficiencies.

In November 1988, a VA Prosthetic Task Force that had investigated the adequacy of prosthetics funding and identified a $10.6 million shortfall for FY 1989. VA officials advised the Committee that the $10.6 million represented a $5-million backlog of prosthetic request orders and a $5.6-million depletion of VA Medical Center (VAMC) prosthetic supply stock. On the basis of that information, the Committee recommended and the FY 1989 Dire Emergency Supplemental Appropriation Act (Public Law 101-45, enacted on June 30, 1989) included a $5-million appropriations add-on specifically for the purchase of prosthetic appliances.

On June 27, 1989, the House of Representatives passed H.R. 901, including provisions to improve certain aspects of the VA prosthetics program.

Oversight activities of the Committee: Committee staff, in reviewing VA prosthetics program activities, initially attempted to determine how the $5-million backlog in FY 1989 had been estimated and if VAMCs were tracking prosthetic request orders properly. Subsequently, Committee staff also examined the VAMC procurement of prosthetic devices from commercial sources, PSAS management oversight of the VA prosthetics program, possible centralized or regionalized prosthetic funding of certain other specialized VA medical care programs, and the criteria for the provision of prosthetic devices to patients who receive treatment in specialized VA programs such as Spinal Cord Injury (SCI) centers and blind rehabilitation centers or clinics.

In addition to a review of these matters, Committee staff examined (1) the coordination among the various VA prosthetics and special-disability programs; (2) funding deficiencies in VA Medical Centers (VAMCs) prosthetics budgets and the adequacy of the Department budget forecasting capabilities for prosthetic services; and (3) the activities of VA's Prosthetics Research and Development Center (PRDC), Prosthetic Distribution Center (PDC), and Hines Marketing Center (HMC).

This review results in the transmittal of four extensive oversight letters from Chairman Cranston to VA regarding different aspects of its prosthetics program. These were an October 10, 1989, letter relating to prosthetics procurement; a December 20, 1989, letter relating to prosthetics management; an April 10, 1990, letter relating to the possible regionalized or centralized funding of certain specialized VA medical programs; and a May 4, 1990, letter relating to the provision of prosthetic services to patients who receive treatment in specialized VA programs.

Based on its investigation, the Committee held on June 7 an oversight hearing on VA's prosthetics and special disabilities programs. In connection with that hearing, the Committee sent to VA extensive pre- and post-hearing questions, on May 18 and June 25, though as of July 13 the Committee hed yet to receive any post-hearing responses. Also in connection with the June 7 hearing, Committee staff visited 11 VA field facilities.

The Committee's review of the VA prosthetics program found a program that is in disarray largely due to lack of priority, mismanagement, and underfunding. As stated by the Deputy Secretary of Veterans Affairs Anthony J. Principi at the Committee's June 7 hearing, "VA officials have made serious and sincere efforts to review and improve aspects of the program. It is abundantly clear, however, that serious problems remain." The Committee appreciates the Deputy Secretary's candor and excellent cooperation with the Committee's investigation of the VA prosthetics program, as well as his personal commitment to see to it that the serious problems associated with that program are corrected. However, the Committee stresses that the pace of corrective action must be expeditious.

In his written statement at the Committee's June 7 hearing, Deputy Secretary Principi expressed interest in taking a number of corrective actions, including centralizing the funding of the VA prosthetics program and establishing an advisory committee on prosthetics services. The Committee believes that both actions should help improve aspects of the prosthetics program. However, the Committee also believes that other actions are needed. For instance, a VA management review task force issued an April 18, 1990, report containing 21 recommendations to improve PSAS operations. In the Committee's view, many, if not most, of those recommendations have merit and are worthy of prompt and serious consideration for implementation.

The following is a summary of problems needing corrective action that have been identified by the Committee in its 10-month review of the VA prosthetics program.

Tracking backlogged prosthetic request orders and forecasting the prosthetics budget: Committee staff visits to PSAS in VA Central Office (VACO) and to various VAMCs were not able to substantiate a firm basis for the $5-million backlog estimated by VA for FY 1989. VACO/PSAS staff said they established the $5 million amount by telephonically querying each of the 172 VAMC's and asking them the total of their backlogged prosthetic request orders. Committee staff visits to various VAMCs disclosed that VAMCs had used different approaches in estimating this backlog. For instance, a VAMC/PSAS chief advised Committee staff that he estimated the backlog by querying those persons on his staff who are responsible for placing prosthetic orders. He added, however, that he did not attempt to confirm independently the information they provided him. Committee staff determined that this VAMC/PSAS service had not system for tracking pending order, making its $187,848 FY 1989 backlog estimate—the second highest nationwide—of uncertain reliability. The Committee believes that a uniform, record-keeping system for tracking pending prosthetic orders at each VAMC is a necessary part of a system-wide process for estimating the status of prosthetics orders.

Better definition of a backlogged prosthetic request order: Committee staff also found considerable confusion in VAMCs as to what constituted a backlogged prosthetic request orders. This produced inconsistency in how prosthetic request orders were being tracked. For instance, a VAMC Prosthetic Clerk advised that she tracked prosthetic request orders from when she received the request in her office to when she forwarded the request to her superior. Conversely, a VAMC Prosthetic Representative advised that he tracked a prosthetic request order from when he received the request in his office to when the patient received the requested prosthetic device.

VA, in its April 18, 1990, response to Committee post-hearing FY 1991 budget questions, admitted that there was some field confusion as to what constituted a backlogged prosthetic request order and how orders were supposed to be tracked. VA additionally responded that it hoped to define by April, but no later than May 1990, in more specific terms what constituted a backlogged order.

In its June 4, 1990, response to pre-hearing prosthetics questions in connection with the June 7 oversight hearing, VA said that a "delayed prosthetic order" would be defined as any order that the local VAMC is unable to process within 5 workdays because of incomplete management or administrative action. Examples of reasons for such delays would be as follows: insufficient funds, staff shortages, untrained staff, difficulty in locating appropriate vendors, and difficulty in securing appropriate records.

The Committee review of backlogged prosthetic request orders found that unusual delays can occur in at least two areas in the processing of such orders. First would be delays from the time when the prescribing physician signs and dates the prosthetic request order to when the prosthetic program office receives it. In this regard, for example, a VAMC chief of Rehabilitation Medicine Service said that he had placed prosthetic request orders in the intra-center mail to the prosthetics program office only to have the office state that they had not been received. A second type of delay is from the time when the prosthetics program office forwards the prosthetic request order to Supply. In this regard, for example, a VACO official said that a VAMC may forward an order to Supply where it may be held—because of unavailable funds—for as much as a month before placement of the order.

Because of some uncertainty as to whether the new definition of a delayed the prosthetic request order will encompass these two areas in the prosthetic request order process, the Chairman asked in his June 25 post-hearing questions whether the definition of a backlogged prosthetic order will cover each area.

Better forecasting of the prosthetics budget: In addition to the need for a better definition of a backlogged prosthetic order, it is the Committee's view that VA needs to forecast its total prosthetic budget needs in a more consistent and valid way. Repeated budget shortfalls in FYs 1987, 1988, and 1989 and probably in 1990, suggest either that VAMCs may be diverting funds intended for prosthetics to other VAMC programs (as has been repeatedly alleged) or that VA has not accurately determined its prosthetic budget funding needs and allocated resources accordingly. It is also probable that both may be true.

A 1985 VA/PSAS Field Operations Study concluded that VAMC prosthetic representatives were experiencing problems in prosthetics budgeting and, because of that, recommended that VACO/PSAS request the VA Office of Information Management and Statistics to udertake an assessment of the size and needs of the prosthetics target population so that a budget forecasting model could be developed. This recommendation, however, was not implemented. In response to a Committee post-hearing FY 1991 budget question, VA said that PSAS did not act on this recommendation largely because VAMC budgets are "heavily based on actual cost and usage".

In view of the fact that VAMC prosthetics budgeting based on actual cost and usage has not been able to avert prosthetics shortfalls in each of the last three fiscal years, and probably in the current fiscal year as well, the Committee viewed the VA response as less than sufficient. Therfore, the Committee submitted a June 25, 1990, post-hearing question to VA urging that this matter be pursued further.

Better allocation of prosthetic resources: The Committee also believes that VA needs to institute a process for resource allocation by which prosthetics services across the nation will be guaranteed to receive resources appropriate to their needs. Committee staff, during its review of VA prosthetics activities, evaluated a number of VAMC prosthetics budgets and determined that some VAMCs might have the same prosthetics workload but that the prosthetics budget at one might be twice as large as the other. For instance, according to VA data for FY 1988, the Boston and the Washington, D.C., VAMCs had the same approximate prosthetics workload, but the Washington, D.C., VAMC's budget for prosthetics was twice that of the Boston VAMC. The only perceived difference between the two was that the Boston facility has an orthotics laboratory and the Washington facility does not. The Washington VAMC, therefore, msut contract for this very expensive service. The matter of such disparities was raised in questions submitted on June 25, 1990.

Prosthetics procurement: Committee staff review of the VA prosthetics program included examining VACO data on the average cost of prosthetic devices bought by various VAMCs. This review showed that, although certain VAMCs may be within close proximity to one another, there were strong indications that they were paying vastly different prices for the same type of prosthetic device. Committee staff efforts to corroborate these indications led to a Committee staff visit to the West Chicago VAMC in September 1989.

At the West Chicago VAMC, medical center personnel indicated that VA Region 4 had already confirmed that VAMCs, within that region had been paying vastly different prices for the same chemical reagent, manufactured by the same company, and distributed to the VAMCs by the same vendor. Because VA Region 4 was concerned that similar procurement inequities were occurring for prosthetic devices, the region had recently initiated a prosthetics cost-containment survery. West Chicago VAMC personnel provided Committee staff with the early results from 4 VAMC responding to that survey which showed that vastly different prices were in fact being paid for certain prosthetic devices.

VACO officials advised that no other VA region was actively analyzing the prices paid by VAMCs for commercially-bought prosthetic devices. Consequently, Chairman Cranston wrote Deputy Secretary Principi, on October 10, 1989, and asked that he monitor the results of VA Region 4's survey and share with the Committee those results as well as his assessment of the potential for consolidated prosthetics procurement, perhaps on a regional level, throughout the VA system.

At the Committee's June 7 hearing, the chairman of the Region 4 Prosthetics Cost Containment Survery Task Force testified that Region 4 focused on 12 prosthetic devices being bought by VAMCs within that region and noted a potential savings of $300,000 on those 12 items. The VA task force chairman also said that the region has made a compendium of the best prosthetics cost-containment ideas and circulated those within the region as well as providing some training to prosthetic clerks and prosthetic representatives based, in part, on the survey results. The VA task force chairman added that a similar prosthetics cost-containment survery is currently in process in the other VA regions in the country. Thereafter, on June 25, 1990, Chairman Cranston submitted to VA several additional questions regarding how the results of the cost-containment study could be implemented on a nationwide basis.

VA's Prosthetics Research and Development Center (PRDC): Committee staff made three visits to PRDC (located in Baltimore, Md.) during March-April 1990 to review that center's activities and those of its three services—the Prosthetics Assessment and Information Center (PAIC), the Office of Technology Transfer (OTT), and the Research Evaluation Unit (REU).

According to mission statements provided to Committee staff, PRDC's three services have distinct responsibilities. Specifically, PAIC is responsible for managing/coordinating the administration, testing, evaluation, and information dissemination associated with commercially available prosthetic devices. OTT is responsible for the dissemination of information on completed and ongoing results of rehabilitation research and engineering developments. REU is responsible for conducting a nationwide program to (1) evaluate new pre-market devices, techniques, or concepts that are developed under the REU program, (2) facilitate the commercial production of those devices that prove effective, and (3) ensure that the fruits of REU's program are available to meet the needs of the nation's disabled veterans.

Relative to those responsibilities, however, the reveiw of PRDC's activities raised questions about its direction, purpose, and accomplishments. For instance, according to the acting PRDC director, PRDC has no mision statement or implementation plan nor has it disseminated any information to the 172 individual VAMCs on its mission, goals, and activities. However, the acting director also said that, since his detail to PRDC in January 1990, he has attempted to remedy some of PRDC's problems. He indicated that, under his direction, a mission statement and implementation plan are being prepared and a PRDC newsletter may be issued by October of this year.

Problems affecting PAIC: Accomplishments were also not plentiful for each of the three PRDC services. For instance, Committee staff observed that PAIC has not attempted to determine the universe of prosthetic devices being used by VAMCs, and to distill from that universe those that may be unsafe or ineffective. Rather, PAIC reviews only those prosthetic devices that manufacturers have submitted to VA for approval testing. Because a manufacturer is not required to obtain PAIC review and approval of its devices before furnishing them to VAMCs, not many manufacturers have sought PAIC review and approval of its devices.

Under this voluntary review and approval system, PAIC has approved slightly more than 100 commercially-available prosthetic devices for use throughout the VA system. This number represents less than one percent of the total number of prosthetic devices being furnished to disabled veterans by VAMCs.

Committee staff also found other PAIC problems, including (1) no approved operating plan for FY 1990, (2) no measurable goals or objectives, (3) no systematic guidelines or procedures specifying whether a device will be paper-reviewed, product-tested, or clinically evaluated (making each individual device review unique, tedious, and time-consuming as an individual protocol is developed on each device reviewed), (4) no guidelines specifying when a manufacturer must obtain reapproval of a prosthetic device if it makes major modifications to that device, (5) no policy for accepting pre-market (i.e., prototype) prosthetic devices for review, (6) no mechanism for ensuring that VAMCs do not furnish a particular prosthetic device to veterans while PAIC is still engaged in reviewing that device, (7) specially designing prosthetic devices only for patients in the Baltimore-Washington area rather than on a national basis, (8) no dissemination of information to VAMCs on those specially-designed prosthetic devices it develops, and (9) specially designing certain prosthetic devices that are apparently already commercially available.

Problems affecting OTT: OTT, the technology transfer arm of PRDC, also has problems. OTT publishes, on a quarterly basis, a journal on prosthetics research and engineering developments and issues clinical supplements (directed to users of prosthetic devices and clinicians in the field). The research journal, however, does not contain periodic review articles on various aspects of the state of the art addressed to VAMC clinicians (as had been recommended by a 1976 VA prosthetics task force report). The acting OTT director was unable to explain why this type of recommended material was not a part of the journal.

OTT has issued only two clinical supplements (one in 1985 and one in 1990). The acting OTT director said his department had little sense of the prosthetic user needs for prosthetic-related information (and, thus, the number of clinical supplements that may still need to be issued). Consequently, Committee staff suggested and OTT agreed to query all 172 VAMCs on their prosthetic user needs which could then be used as a basis for short- and long-range OTT planning. OTT indicated that work would commence immediately on developing a VAMC questionnaire for this purpose.

Problems affecting REU: Investigation by Committee staff identified the following problems at REU: (1) no REU director for nearly a year, (2) no operating plans, (3) no performance measurement goals or objectives, (4) no program evaluations of REU's performance, (5) no complete listing of evaluated prosthetic devices, (6) no evaluation completed of a prosthetic device between August 1988 and May 1990, (7) no equipment testing of the prosthetic devices under evaluation, and (8) no dissemination of clinical information on the prosthetic devices that have completed evaluations.

During the Committee's June 7 hearing, VA Deputy Secretary Principi, reacting to the problems identified with respect to PRDC activities, said that the VA needs "to take a good, hard look at PRDC and how it operates and, if necessary, overhaul it."

As a result of the Deputy Secretary's testimony at the Committee's June 7 hearing, Chairman Cranston submitted several follow-up questions regarding the scope of the VA's planned review of PRDC operations.

VA's Hines Marketing Center (HMC): Committee staff visits to PRDC suggested that personnel there had limited knowledge of HMC activities or of that organization's relationship to the PRDC. More importantly, it appeared that PRDC and HMC were duplicating efforts in clinical evaluations on commercial products which might be broadly considered prosthetic devices. Because of this Committee staff visited HMC in April 1990.

According to HMC staff, HMC is responsible for procuring and distributing good quality commercial medical and subsistence items under the most favorable terms, conditions, and discounts reflecting the government's preferred customer status. HMC staff identified themselves as procurement experts as opposed to clinicians. Not being clinicians, HMC personnel had difficulty explaining to Committee staff (1) why their center was involved in coordinating clinical (i.e., patient) evaluations of products, (2) why HMC may be conducting clinical evaluations on products that may pose a safety risk to the patients participating in the evaluations, and (3) having no clinical expertise, why HMC is permitted to decide which or how many VAMCs should participate in the clinical evaluations.

According to HMC staff, VACO's Prosthetic Technology Evaluation Committee (PTEC), chaired by the PSAS director, makes all decisions regarding the evaluation of new medical/prosthetic devices, but HMC staff were unaware of the criteria used by PTEC to decide whether the PAIC or the HMC will coordinate the clinical evaluation of a device.

Similarly, HMC staff said that PTEC makes the decision as to which prosthetic devices on the Federal Supply Schedule must be PAIC reviewed and approved and which must not. At present, HMC personnel indicated that sport wheelchairs, power wheelchairs, and motorized three-wheeled vehicles must be PAIC reviewed and approved whereas other prosthetic devices, including manual wheelchairs, wheelchair accessories, wheelchair replacement parts, patient lifters, canes, crutches, walkers, exercise equipment, blind aids, and communication aids, do not require PAIC review.

Although PTEC requires that only three prosthetic device types appearing on the Federal Supply Schedule be PAIC reviewed and approved, Committee staff noted that PAIC presently reviews and approves as many as 20 different types of devices. It is unclear why, if PAIC reviews and approves 20 or more types of devices, the Federal Supply Schedule specifications do not stipulate that each of these devices be PAIC-reviewed.

VA's Prosthetic Distribution Center (PDC): Committee staff review of VACO-PSAS files noted that this service had evaluated PDC activities in May 1988 and raised numerous questions regarding the efficiency of PDC operations. The site visit determined, for instance, that PDC was experiencing decreased workloads in providing certain prosthetic items and, yet, at the same time, was requesting additional resources and FTE. On the basis of this VACO/PSAS evaluation, Committee staff independently requested specific PDC documentation. This documentation suggested that VAMCs were apparently ordering fewer prosthetic items from PDC while PDC, at the same time, was taking longer to fill those orders. Consequently, Committee staff visited PDC, located in Denver, Co., during October 1989.

The Committee staff visit to PDC found that this center has nationwide distribution responsibility for VA's hearing aid program and also limited distribution responsibility for three other commodity types—orthopedic (braces and elastic hose), amputee stump socks, and blind aids. With respect to the latter three types of commodities, available VA information (from VA's Automated Management Information System (AMIS)) was reporting that PDC was supplying only a relatively small percentage of these commodities used thorughout the VA system. (For instance, for blind aids, AMIS reporting indicated that PDC supplied only 19 percent of those aids provided during FY 1988.) Responding to Committee staff questions regading such percentages, the PDC director indicated that the VA network for notifying PDC of what items to stock has not worked well. In this regard, the PDC director specifically mentioned that there was no regular input from VACO, and VACO/PSAS has not suggested that a single new item be added to PDC's inventory in the last 10 years.

Consequently, prior to, during, and subsequent to the November 9, 1989, confirmation hearing of David Lewis as VA Assistant Secretary for Acquisition and Facilities, Chairman Cranston asked him certian questions about the PDC operations. Generally, those questions dealt with such matters as (1) what VA network, if any, exists for notifying the PDC of what item it should stock, (2) why PDC is supplying such a low percentage of items from certain commodity types, and (3) what the economic advantaged of PDC distribution of certain commodity types are versus other VA supply options?

Mr. Lewis responded to these questions by establishing—on March 7, 1990—a PDC management review task force. According to its charter, this task force has been asked to study the internal organization of the PDC, PDC's placement in VA's organization, and the most cost beneficial methods of distributing the commodities presently being managed by the PDC. A final report from this task force is due no later than September 1990.

At the Committee's June 7 hearing, the Chairman asked the chairman of the PDC task force to examine the apparent communication gap between the PDC and prosthetics personnel at individual VAMCs. In addition, Chairman Cranston submitted to the PDC task force chairman several post-hearing questions concerning the knowledge and satisfaction VAMC prosthetics personnel had regarding PDC and asking for any ideas they might have for improving PDC's service.

Provision of prosthetic devices in VA's special-disabilities programs: Committee staff review of VAMC prosthetic information reported to VACO raised the general question as to whether there is consistency as to the types of devices supplied in VA's blind rehabilitation and SCI programs. For instance, that information indicated that blinded veterans who undergo treatment in VA's various blind rehabilitation centers and clinics were receiving different numbers of blind aids and that the average cost of the commercial blind aids issued varied also. The following table illustrates the lack of consistency found in blind rehabilitation centers' data:

Station	Average number of aids issued per admission	Average cost of commercial aids issued
Birmingham	8.7	$49.05
West Haven	17.9	28.71
Hines	17.1	46.15
Palo Alto	7.9	43.52
American Lake	12.3	37.10
Waco	9.3	56.12

Consequently in January 1990 Committee staff visited the West Haven VAMC and the Castle Point VAMC to review its blind rehabilitation and SCI programs, respectively.

At each specialized center, specialists had definite views on which prosthetic devices should be provided to each veteran treated at the center; however, neither center had developed a list of normally-required devices not did the VA specialists interviewed indicate that a VA-wide list of normally-required devices existed. Although clinicians cautioned that such a list could not and should not be used preclude treatment designed to suit a patient's individual disability, they indicated that the absence of such a list—as a guide—could result in three situations. First, certain blind or SCI veterans might not receive certain prosthetic devices that should normally be issued in connection with their treatment; second, the level of treatment in these specialized programs might vary widely; and, third, budget forecasting for the prosthetics needs in these programs might be inadequate. Committee staff investigation confirmed each of these results.

With respect to the concern that individuals might not be receiving needed prosthetic devices, Committee staff telephonically contacted 20 individuals, 10 who underwent blind rehabilitation treatment at the West Haven VAMC and 10 who under went SCI treatment at the Castle Point VAMC. Each individual contacted was asked whether he had received each of those prosthetic devices that had been identified by specialists at those respective centers as being normally required. Collectively, 9 of the 10 (or 90 percent) of the blind rehabilitation patients contacted and 6 of the 10 (or 60 percent of the SCI patients contacted indicated there were about 5 prosthetic devices, on the average, that had not been received.

Committee staff also compared the average cost of prosthetic devices issued to patients treated at the various VA blind rehabilitation and SCI centers, respectively. This comparison showed wide variations in the average cost of prosthetic devices issued to each patient treated—ranging from $538 to $1103 for blind patients and from $130.42 to $1,319.87 for SCI patients.

In view of this information, Chairman Cranston wrote Deputy Secretary Principi on May 4, 1990, and asked that he further examine the provision of prosthetic devices for these two VA special-disability programs. Specifically, the Chairman asked the Deputy Secretary to advise him as to whether or not be believed (1) a list of normally-required prosthetic devices should exist, (2) major inconsistencies exist in the provision of devices in these two VA programs, and (3) what mechanism should and would be put in place in the future to routinely guard against such inconsistencies. In addition, the Chairman asked that appropriate VA personnel contact those individuals contacted in the telephone survey who were not provided normally-required prosthetic devices so that a determination could be made as to whether those devices should be provided.

At the time of the Committee's June 7 hearing, a reply from the VA Deputy Secretary on the matters raised in the May 4 letter had not yet been received. Therefore, in his June 25 post-hearing prosthetics questions, the Chairman asked VA several questions. Those questions included: (1) what VA examination of the matters discussed in the Chairman's May 4 letter had taken place to date, and (2) when can the Committee expect a report on the results of VA's examination of this matter?

Possible central or regional funding of blind rehabilitation, SCI, and certain other specialized VA medical care-programs: In examining VA' special disability programs, Committee staff also reviewed whether central or regional funding of certain VA specialized medical care programs would be preferable. The Blinded Veterans Assocation and other organizations had noted that the blind rehabilitation centers and clinics serve veterans on a regional, if not national, level but must depend on the resources of their host medical centers for funding support. Unfortunately, under such a scheme, there centers and clinics can suffer a reduction simply because the host center experiences a budget cut. Such a situation occurred at the Topeka VAMC, where in January the special inpatient center for PTSD treatment—one of 16 in the country at the time—was planned to be closed by the medical center director due to funding constraints at the facility. Because of the apparent inequities associated with such a reduction, Committee staff contacted the VACO Veterans Health Services and Research Administration (VHS&RA) Office of Budget Administration to inquire as to what procedures or criteria exist for designating VA programs for central or regional funding and what specific VHS&RA programs were presently receiving such funding.

VACO's response to the Committee staff inquiry suggested that there may be little consistency in VA's designation of which medical care programs should receive central or regional funding. According to the Office of Budget Administration, there were no existing procedures or criteria in place and a VAMC or VA medical district could obtain central or regional funding for a program by simply proposing it and gaining VACO approval. VACO also provided the Committee with a listing of those VHS&RA programs presently receiving central or regional funding. Committee staff review of this listing did not reveal any clear pattern among the listed programs.

Consequently, Chairman Cranston wrote Secretary of Veterans Affairs Edward J. Derwinski on April 10, 1990, and urged his consideration of the need to improve the mechanism by which funding is provided to certain specialized VA medical care programs. Specifically, the Chairman asked the Secretary to (1) see which additional VA programs, if any, should be funded on a regional or centralized basis, (2) examine the procedures and criteria that exist for designating VA programs to receive funding on such a basic, and (3) to the extent that these procedures and criteria do not exist, consider developing such procedures and criteria and formalizing them.

VA has recognized the multi-regional nature of certain specialized programs. VA Circular 10-87-117, dated October 6, 1987, had attempted to address the issue of the multi-regional nature of blind rehabilitation centers and clinics. That circular, signed by the Deputy Chief Medical Director, recommended that any proposed staffing reductions due to decreasing resources should not be imposed on the center or clinic. Instead, the circular recommended that the reduction should be dispersed throughout the multi-region service area to minimize its impact. The circular further recommended that in facilities where past reductions have occurred, efforts should be made to restore the staffing to previous levels. Despite the recommendations of this circular, the chief of the Hines VAMC blind rehabilitation center advised Committee staff that the circular has not been implemented and that his center has lost 2 FTE in FY 1990.

Siting of blind rehabilitation centers and clinics and SCI centers: Committee hearings on the VA Commission on the Future Structure of VA Health Care revealed that the commission will be looking at the future of VA's medical care system by the year 2010. Inasmuch as that Commission will be studying the long-term future of VA, Committee staff inquired as to what VA criteria will be used over the next 20 years in situating VA's specialized prosthetic-related program centers.

Committee staff contacted the VACO directors of the VA Blind Rehabilitation Service and SCI Service to determine how centers related to both services are presently sited. The answer received by both service directors was essentially the same. Neither service had or used demographic data in siting their respective centers. Instead, both service directors advised Committee staff that centers were sited based on "grass roots planning". The two service directors indicated, in other words, that a VA medical center would decide it wanted a particular type of center, would propose it, and forward the proposal through the VA chain of command to VACO for approval.

Committee staff compared the present and planned locations of blind rehabilitation centers and clinics and SCI centers with available information on the demographics of the segments of the veteran population served by those centers and clinics. The Blinded Veterans Association and the Paralyzed Veterans of America were both contacted for demographic data which was readily available from those sources.

This comparison showed gaps or inconsistencies in the geographical coverage provided by these centers and clinics. For instance, according to VACO information, VA presently has 8 blind rehabilitation centers or clinics and is planning two additional ones—one in Lebanon, Pennsylvania and one in Dallas, Texas. With the addition of those two centers or clinics, Texas would have two centers or clinics and Florida would have none, but both States would have the about same number of blinded veterans (about 4,480). Similarly, Texas would have two centers or clinics and California would have one, but California would have about double the number of blinded veterans (about 8,500). Moreover, with those additions, VA Region 2 would have one center or clinic whereas VA Region 3, with a slightly lower number of blinded veterans, would have four centers or clinics.

The siting of SCI centers also indicates similar gaps or inconsistencies. Presently, VA has 20 SCI centers and is planning three additional ones—one in Albuquerque, New Mexico (construction completion in January 1991), one in San Antonio, Texas (construction completion in April 1991), and one in Dallas, Texas (construction to begin in 1992). With the addition of those three centers, neither Pennsylvania, Michigan, or North Carolina would have an SCI center yet each of those States ranks among the nation's top 10 States with respect to the number of spinal cord injured veterans. Conversely, Virginia with a ranking of 12 has two SCI centers. Also, VA is planning an SCI center for New Mexico but none for Colorado—which has more than double the number of spinal cord injured veterans. Furthermore, according to information provided to the Committee, there is no existing or planned SCI center for the area west of St. Louis, Missouri, north of Albuquerque, New Mexico, and east of Palo Alto, California (largely, the Plains and the Mountain States).

Therefore, in his June 25 post-hearing prosthetics questions, Chairman Cranston asked VA (1) what criteria will VA be using in the near-term to situate its specialized prosthetic-related program centers, and (2) do the apparent gaps or inconsistencies in the geographical coverage provided by VA's blind rehabilitation centers or clinics and SCI centers reveal a need for VA to develop a more rational, equitable approach to situating these centers?

PSAS' oversight of the VA prosthetics program: Committee staff examination of VACO data also revealed that certain VAMCs were reporting unusual prosthetic procurement trends. For instance, an examination of Loma Linda VAMC prosthetics data submitted to VACO showed that this medical center was obtaining all of its prosthetic devices from commercial sources and none from VA sources. An examination of the Washington, D.C., VAMC prosthetics data showed that this medical center was paying twice the national VA average for leg and spinal braces. Despite the reporting of such unusual procurement trends to Central Office, VACO/PSAS had not questioned the information.

Consequently, the Committee staff undertook an analysis of whether VACO-PSAS was exercising its management oversight responsibilities well. This analysis included determining if PSAS was (1) making a sufficient number of planned site visits to field facilities to ensure compliance with VA prosthetics procedures; (2) performing recurring site visits to field facilities where an earlier site visit report had recommended a followup; (3) reviewing, evaluating, and coordinating requests for prosthetic devices submitted by VA field facilities; and (4) conducting studies of program operations.

PSAS' efforts appeared to fall short in each of these four areas. For instance, this analysis showed that PSAS had made only 4 site visits, on the average, over each of the past 3 years. At that rate, the PSAS would need over 40 years to visit all 172 VAMCs. In addition, it was noted that on site visits where myriad problems were documented and a return visit was recommended no official return visits were being made. This was the case as to three programs within the last four years. It was further noted that PSAS was not monitoring VA field facilities' buying preferences and identifying specific commercial prosthetic devices being bought by a number of facilities that could and should be procured under contract and made available to facilities through the 3 VA Supply Depots or the PDC. Finally, it was clear that PSAS was not conducitng studies of program operations to a sufficient degree. For example, in addition to the two unusual procurement trends previously noted, it was noted that the Tampa VAMC was paying more than $84,000 for wheelchair repairs in FY 1989 whereas the national VA average was about $20,000. Such an unusually high expenditure for repair work would normally have raised the question as to whether it would be more efficacious to hire a repair person and conduct repairs in-house. However, VACO-PSAS indicated that such questions were not being asked.

In response to the concerns expressed in the Chairman's December 20, 1989, letter regarding PSAS' oversight activities, VA formed, in January 1990, a management review task force to examine PSAS' operations. The VA task force reviewed the 4 areas mentioned in the Chairman's December 20 letter and, in an April 18, 1990, report to the Deputy Chief Medical Director, made 21 recommendations to improve PSAS' operations.

At the Committee's June 7 hearing, the Chairman expressed support for the task force report's recommendations and sought commitments from VA that the recommendations would be promptly implemented. The VA Deputy Secretary, responding to those expressions of support for the task force report, agreed to implement rapidly the report's recommendations. On June 15, 1990, he established a special working group composed of representatives of four offices—Chief Medical Director, Assistant Secretary for Acquisition and Facilities, the Assistant Secretary for Finance and Planning, and General Counsel—and and asked the group to make recommendations to him by August 10 for resolving the issues for improving the delivering of prosthetic services to veterans.

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